

# EXHIBIT F

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 Civil Action No. 15-CV-05814 (JPO)

5 -----x

6 CMG HOLDINGS GROUP, INC. as assignee  
7 of XA, THE EXPERIENTIAL AGENCY, INC.,  
8 Plaintiff,

9 -against-

10 JOSEPH WAGNER, HUDSON GRAY LLC,  
11 DARREN ANDERECK, JESSIE LOMMA,  
12 MICHAEL DAY, JEAN WILSON, ESTELLE  
13 PIZZO, STUDIO AG, LLC, REMIGIO GUDIN,  
14 and MIXED COMPANY, INC.,  
15 Defendants.

16 -----x

17  
18 November 2, 2018

19 10:01 a.m.

20 Job No. NJ3073935

21 Deposition of JOSEPH WAGNER, held at  
22 the offices of Peckar & Abramson, 1325 Avenue of  
23 the Americas, New York, New York, pursuant to  
24 Notice, before Lynne D. Metz, a Shorthand Reporter  
25 and Notary Public of the State of New York.

A P P E A R A N C E S:

PECKAR & ABRAMSON

Attorneys for Plaintiff

1325 Avenue of the Americas

New York, New York 10019

BY: KEVIN J. O'CONNOR, ESQ.

SHANNON D. AZZARO, ESQ

WINDELS MARX LANE & MITTENDORF, LLP

Attorneys for Defendants

156 West 56th Street

New York, New York 10019

BY: SCOTT R. MATTHEWS, ESQ.

ALSO PRESENT:

Barbara Laken

Darren Andereck

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3  
4 IT IS HEREBY STIPULATED AND AGREED, by and  
5 between the attorneys for the respective parties  
6 herein, that filing and sealing be and the same  
7 are hereby waived.

8 IT IS FURTHER STIPULATED AND AGREED  
9 that all objections, except as to the form of the  
10 question, shall be reserved to the time  
11 of the trial.

12 IT IS FURTHER STIPULATED AND AGREED that the  
13 within deposition may be signed and sworn to  
14 before any officer authorized to administer an  
15 oath, with the same force and effect as if signed  
16 and sworn to before the officer before whom the  
17 within deposition was taken.  
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1

2 J O S E P H W A G N E R,

3 called as a witness, having been first duly sworn

4 by the Notary Public (Lynne D. Metz), was

5 examined and testified as follows:

6 EXAMINATION BY

7 MR. O'CONNOR:

8 Q. Good morning, sir.

9 A. Good morning.

10 Q. As you know, I represent the plaintiff  
11 in this action and we are here for a corporate  
12 designee deposition pursuant to a notice. I think  
13 the best thing to do first is to talk about who is  
14 going to talk about what.

15 MR. MATTHEWS: Okay.

16 MR. O'CONNOR: Please mark as HG  
17 Exhibit 1 notice of deposition.

18 (HG Exhibit 1, notice of deposition,  
19 marked for identification, as of this date.)

20 Q. Have you ever seen HG 1 before, the  
21 document in front of you?

22 A. Yes, I have.

23 MR. O'CONNOR: So you have a copy  
24 there counsel.

25 Do you want to -- I don't know if you

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J. Wagner

want to speak or is this witness going to  
tell me who is going to speak on each  
subject? Which would you prefer to do?

MR. MATTHEWS: I can speak.

I sent you an e-mail earlier this week  
identifying that Mr. Wagner will speak with  
respect to topic areas 1, 2, 3, 10, 11, 14,  
15, 16, 17 and 18.

And the e-mail also stated that Darren  
Andereck is prepared to testify as to topic  
areas 1, 2 --

MR. O'CONNOR: So number one you told  
me that -- so he is going to explain what he  
reviewed. So we will put Darren Andereck  
for 1.

What else again?

MR. MATTHEWS: 2, 4, 5, 9, 10, 11, 12,  
13, 15, 16, 17 and 18.

MR. O'CONNOR: So that leaves.

MR. MATTHEWS: 6, 7 and 8.

MR. O'CONNOR: And what is your  
position on this?

MR. MATTHEWS: The position is that  
the events, actions or events set forth in

1 J. Wagner

2 6, 7 and 8 did not occur but either witness  
3 is prepared to answer questions to the  
4 extent they have knowledge of them.

5 MR. O'CONNOR: So 6, 7 and 8 you said  
6 the events did not occur.

7 Are you saying in 8 that they didn't  
8 purchase cellular telephones?

9 MR. MATTHEWS: Your question is  
10 whether HudsonGray purchased cellular  
11 telephones for HudsonGray employees in 2014?  
12 You can ask either witness. I don't know  
13 that that occurred.

14 MR. O'CONNOR: Okay. I don't  
15 necessarily agree with it but I understand  
16 your position so let's move forward and see  
17 how far we progress with it.

18 MR. MATTHEWS: Good.

19 BY MR. O'CONNOR:

20 Q. Good morning sir.

21 A. Good morning.

22 Q. Where do you reside?

23 MR. MATTHEWS: Objection. The witness  
24 is prepared to give his address as his  
25 business address in Chicago, Illinois and I

1 J. Wagner

2 will accept service of any trial subpoena on  
3 his behalf. This is noted in his deposition  
4 as a party and I am continuing to stipulate  
5 to that in that regard.

6 Q. So you are refusing to --

7 MR. O'CONNOR: You are directing him  
8 not to tell me where he resides; is that  
9 correct?

10 MR. MATTHEWS: The home address.

11 MR. O'CONNOR: I am asking where he  
12 resides.

13 MR. MATTHEWS: That's a fair question.

14 A. It is in Chicago.

15 Q. Do you commute back and forth to New  
16 York?

17 A. I do occasionally, yes.

18 Q. What have you done to prepare for  
19 today's deposition?

20 A. Review the complaint. Went through  
21 some of the materials around that and had  
22 discussions with counsel.

23 Q. Just so it is clear, I don't want to  
24 know about your discussions with your lawyer,  
25 provided you tell me -- did you have a meeting



1 J. Wagner

2 with him?

3 A. Yes, we did.

4 Q. How long was the meeting?

5 A. A couple of hours.

6 Q. Can you tell me who was in the  
7 meeting?

8 A. Myself and Darren and Scott.

9 Q. Was Mia Blagsvedt -- is that how you  
10 pronounce her name?

11 A. No, Mia was not in the meeting.

12 Q. Anybody else?

13 A. No, just the three of us.

14 Q. When was that meeting?

15 A. Yesterday.

16 Q. How long was the meeting?

17 A. A couple of hours.

18 Q. Did you review anything at that  
19 meeting?

20 A. We did.

21 Q. Other than what you just said, you  
22 said you looked at the complaint?

23 A. Correct.

24 Q. What else did you look at?

25 A. Some supporting documents.

1 J. Wagner

2 Q. Like what?

3 A. Went through some e-mails and  
4 financial statements.

5 Q. Did you happen to look at any of the  
6 materials that were produced by David Tuma?

7 A. I did. We went through some of those  
8 materials.

9 Q. Do you remember what you look at?

10 A. Went through some e-mails and  
11 invoices.

12 Q. Were some of the invoices you looked  
13 at what was sent over to you yesterday?

14 A. It was contemporaneous with yesterday,  
15 yeah.

16 Q. When was the last time you spoke to  
17 David Tuma?

18 A. I had a conversation with David  
19 yesterday.

20 Q. What did you talk to him about?

21 A. We went through some clarifications on  
22 an e-mail and invoicing.

23 Q. Can you tell me what was said and who  
24 said it?

25 A. So best of recollection, we discussed

1 J. Wagner

2 an e-mail that I went through with counsel.  
3 Talked with David about that. Clarification on  
4 the points that were laid out in the e-mail and  
5 also reviewed an invoice that was associated with  
6 that.

7 Q. Do you remember the date of that  
8 e-mail?

9 A. It was May 21st and there was an  
10 e-mail from May 22nd.

11 Q. Two e-mails you looked at; right?

12 A. Correct.

13 Q. Prior to yesterday when you spoke to  
14 David Tuma, had you spoken with him in recent  
15 past?

16 A. I talked to him a couple of weeks ago  
17 when he got a subpoena.

18 Q. What did you talk about?

19 A. Basically we caught up on how his  
20 business was doing. Discussed the subpoena and I  
21 instructed him to contact Scott Matthews.

22 Q. So you received notice that a subpoena  
23 had been issued to Mr. Tuma; right?

24 A. Correct.

25 Q. And then you called Mr. Tuma; right?

1 J. Wagner

2 A. Correct.

3 Q. And then you gave Mr. Tuma Mr.  
4 Matthews' phone number?

5 A. Correct.

6 Q. Did you say anything else to him?

7 A. Just talked about the context of the  
8 case. How long it was going on. Nothing in a lot  
9 of specifics. Just basically the subpoena and to  
10 speak with Scott Matthews.

11 Q. Do you remember what you said to him  
12 about the case?

13 A. I said it was going on and on.

14 Q. That's it?

15 A. In that kind of context. Again, I  
16 don't have the verbatim of the conversation but  
17 that was the context.

18 Q. How long was the conversation?

19 A. Not very long.

20 Q. Can you approximate nor me?

21 A. Probably ten, 15 minutes. A lot of it  
22 was catch up too. We talked about his recent  
23 travel and getting to different parts of Asia and  
24 I don't see David very much. So there was some  
25 catchup as well.

1 J. Wagner

2 Q. David Tuma is with a company called  
3 Creative IT Consulting; is that correct?

4 A. That's correct.

5 Q. There's a couple of creatives in this  
6 case, so I guess I shouldn't use creative. I want  
7 to come up with a short form.

8 Can we just say David Tuma's company  
9 and when we are referring to --

10 A. That's fine.

11 Q. When was the last time that you  
12 utilized David Tuma's company for HudsonGray  
13 affairs?

14 A. David Tuma has been working with  
15 HudsonGray for years. David Tuma is currently IT  
16 working with HudsonGray now.

17 Q. Do you have some understanding why he  
18 hasn't produced any records beyond 2015?

19 A. Sorry?

20 Q. Did you speak to him about what he was  
21 going to be producing?

22 A. No. Just in a general sense but  
23 there's a list of requests and you should speak  
24 with Scott Matthews about that.

25 Q. You didn't suggest to him that he

1 J. Wagner

2 shouldn't produce anything, did you?

3 A. No, I did not.

4 Q. Did you offer to pay his expenses?

5 A. No. We didn't talk about that.

6 Q. Have you offered to produce, pay his  
7 expenses associated with the subpoena?

8 A. There hasn't been any expenses. In  
9 terms if he does work product for us he would just  
10 bill us but he is not traveling or doing anything  
11 so we didn't talk about expenses.

12 Q. As of this moment have you received  
13 any invoices for his work in responding to the  
14 subpoena?

15 A. No.

16 Q. How about any other recipient of the  
17 subpoena issued from my firm over the last month,  
18 have you received a bill from anyone for their  
19 time responding to the subpoena?

20 A. Not that I am aware of.

21 Q. Now you have been deposed before;  
22 correct?

23 A. That's correct.

24 Q. So I am going to ask you questions and  
25 I would like to get an answer from you. If we get

1 J. Wagner

2 an answer from you it is going to be assumed that  
3 you understood that question; okay?

4 A. Understood.

5 Q. If I've asked you a question you don't  
6 understand, just tell me. I will be more than  
7 happy to rephrase it.

8 A. I understand.

9 Q. If you need a break from time to time  
10 just let me know. We have a breakout room and you  
11 are more than welcome to use it, even when we  
12 bring in lunch but I would ask if there is a  
13 question pending you answer that question; okay?

14 A. I understand.

15 Q. Who are the owners of HudsonGray  
16 Incorporated?

17 A. I am the sole shareholder of  
18 HudsonGray.

19 Q. Have there ever been shareholders of  
20 HudsonGray?

21 A. No.

22 Q. Is there a predecessor company to  
23 HudsonGray that you have ever operated with the  
24 same name?

25 A. Rephrase the question please.

Page 15

1 J. Wagner

2 Q. I am sorry. That was a poor question.

3 HudsonGray Incorporated was  
4 incorporated in Delaware?

5 A. Correct.

6 Q. Did you ever operate a business named  
7 HudsonGray?

8 A. Again, in time frame?

9 Q. Ever.

10 A. There is a HudsonGray operating now.

11 Q. I understand that.

12 Prior to forming the Delaware company,  
13 did Joe Wagner ever participate in running a  
14 company called HudsonGray?

15 A. No.

16 Q. Were you ever an employee of a company  
17 called HudsonGray?

18 A. No.

19 Q. So would you call that a startup  
20 company HudsonGray?

21 A. That's a fair assessment.

22 Q. In other words, it had no assets;  
23 right?

24 A. Correct.

25 Q. Had no clients; right?



Page 16

1 J. Wagner

2 A. As a newly formed entity.

3 Q. Had no furniture; right?

4 A. No, it did not.

5 Q. Had no bank accounts?

6 A. No bank accounts.

7 Q. Had no data; right?

8 A. Everything was a startup company,

9 correct.

10 Q. So the answer is no, it had no data?

11 A. It has no data.

12 Q. When was the first time that you  
13 contemplated forming a company called HudsonGray?

14 A. So by associating the name there is a  
15 time frame around that. The HudsonGray name came  
16 up in the Spring of 2014.

17 Q. Do you remember when?

18 A. It was around March.

19 Q. And that's when you came up with the  
20 name; right?

21 A. That's correct.

22 Q. But prior to that you had contemplated  
23 forming your own company; right?

24 A. Correct.

25 Q. When do you think you first started

1 J. Wagner

2 thinking about that?

3 A. Specifically around a new company  
4 would have been sometime around the beginning of  
5 2014 but the situation that was going on with  
6 Glenn Laken.

7 Q. Would you say that that was within the  
8 first few weeks of 2014?

9 A. I would say within the first month  
10 after several of the meetings that I had with  
11 Glenn Laken at the time and Jeff Devlin and also  
12 Ron Burkhardt.

13 Q. Is it your testimony that until those  
14 meetings occurred you had not had any thoughts  
15 going on your own forming that company?

16 A. That's not correct. I had some  
17 discussions with employment counsel in the Fall of  
18 2013 because there was again issues that were  
19 challenging around Glenn Laken's activities and  
20 purported ownership of the company and things of  
21 that nature.

22 Q. So you had these discussions with a  
23 lawyer in the Fall of 2013 and yet you embark in  
24 an adventurous plan building out the IT in New  
25 York; right?

1 J. Wagner

2 MR. MATTHEWS: Objection.

3 Q. Do you understand the question?

4 A. Can you rephrase it?

5 Q. You just told us that in the Fall of  
6 2013 you were thinking about leaving; right?

7 A. In the Fall of 2013 I was talking with  
8 employment counsel about my position with the  
9 company based on an aggressive track that was  
10 being taken by the purported owner of the company  
11 being Glenn Laken.

12 Q. Who hired David Tuma to upgrade the  
13 information technology in the New York office?

14 MR. MATTHEWS: Objection.

15 Q. Was it you or Miss Wilson?

16 MR. MATTHEWS: When you say the New  
17 York office, what do you mean by that?

18 MR. O'CONNOR: I will rephrase it.

19 MR. MATTHEWS: Thank you.

20 BY MR. O'CONNOR:

21 Q. In December of 2013 efforts were made  
22 to upgrade the information technology system at  
23 XA; correct?

24 A. Correct.

25 Q. A lot of money was spent; right?

1 J. Wagner

2 A. You can quantify that but there was  
3 money spent on upgrading the IT equipment and the  
4 IT infrastructure.

5 Q. And that started in December of 2013;  
6 correct?

7 A. I don't recall exactly when it started  
8 but there was a need to enhance the IT  
9 infrastructure, so probably starting in the Fall  
10 of 2013.

11 Q. Who within XA approved those  
12 expenditures?

13 A. Jean Wilson was the one that was most  
14 involved in doing the budget and expense around  
15 office equipment and IT and was mostly the direct  
16 contact with David Tuma.

17 Q. When you say mostly, were you also in  
18 contact with Mr. Tuma about these efforts?

19 A. Occasionally but more at a high level.  
20 Jean was very good at managing the detail.

21 Q. Did you let Mr. Tuma in on your plans  
22 to form your own company --

23 MR. MATTHEWS: Objection.

24 Q. -- at some point? You can answer.

25 MR. MATTHEWS: Objection.

1 J. Wagner

2 Go ahead.

3 A. There was communication with David at  
4 some point. I don't recall when. And he became  
5 someone who was assisting me in setting up  
6 HudsonGray later in 2014.

7 Q. It could have been in the Fall of 2013  
8 when you told Mr. Tuma your plans?

9 A. No, I don't believe so.

10 Q. When was it?

11 A. It would have been after I had left XA  
12 or in the process of setting up plans for the  
13 company or doing the logistics. David was the IT  
14 person, so that would have been contemporaneous to  
15 2014 in the spring.

16 Q. So your testimony understand oath is  
17 that you did not tell David Tuma until you  
18 resigned from XA?

19 A. No. I don't recall exactly when David  
20 became aware of it, but I don't recall having any  
21 conversations with David about leaving XA in the  
22 Fall of 2013.

23 Q. My question is: Are you able to say  
24 under oath you did not tell David Tuma before you  
25 resigned from XA that you were leaving --

1 J. Wagner

2 A. I don't recall the time.

3 Q. You have to let me finish. That's one  
4 of my instructions that I forget. You have to let  
5 me get my question out, then pause a little bit  
6 because he may have an objection, then answer.

7 A. I understand.

8 Q. It will go faster.

9 A. I understand.

10 Q. Are you able to say definitively under  
11 oath that you did not tell David Tuma that you  
12 were leaving to form your own company until you  
13 left XA?

14 A. I don't recall when I told David four  
15 and a half years ago.

16 Q. Who within XA handled the preparation  
17 of David Tuma's invoices for submission to  
18 accounting at XA?

19 A. I am sorry.

20 Could you say that again?

21 Q. David Tuma performed services in  
22 December of 2013; right?

23 A. Correct.

24 Q. And that was the upgrade of  
25 information technology at the New York office;

1 J. Wagner

2 right?

3 A. I am assuming that that happened then.  
4 I don't recall specific invoices verbatim but  
5 David Tuma was someone who would provide invoices  
6 to XA that would be paid.

7 Q. So we agree that he would provide  
8 invoices to XA and they would be paid; right?

9 A. That's correct. He was a vendor.

10 Q. So my question to you is: Did you  
11 have any role in taking the invoices from David  
12 Tuma, presenting them to the bookkeeping and  
13 having them paid?

14 A. No.

15 Q. Is that all Jean Wilson?

16 A. Jean Wilson yes, correct.

17 Q. Were you aware that the invoices for  
18 David Tuma were altered when they were submitted  
19 to XA?

20 A. No. I am not aware of that.

21 Q. You can't think of any reason why XA  
22 wouldn't be entitled to the full invoice, can you?

23 MR. MATTHEWS: Objection.

24 Go ahead.

25 A. No, I cannot.

Page 23

1 J. Wagner

2 Q. Do you have a shareholder's agreement  
3 for HudsonGray?

4 A. Not that I recall. I believe it was  
5 just formation documents.

6 Q. Is it a C-Corp or an S-Corp?

7 A. It is a C-Corp.

8 Q. Has it filed tax returns for calendar  
9 years 2014 through 2017?

10 A. Yes, it has.

11 Q. And you possess those?

12 A. I can get them through the accountant,  
13 yes.

14 Q. And did you file both State of New  
15 York and Federal?

16 A. Yes. As far as I know state and  
17 federal filings have been done every year.

18 Q. And also in the State of Illinois or  
19 no?

20 A. I am not sure on that. I have to  
21 check with the accountant.

22 Q. Are there any written agreements  
23 between HudsonGray and any of its employees about  
24 their employment?

25 A. I believe we have a standard



1 J. Wagner

2 non-disclosure agreement that is done with any  
3 kind of contractors, perhaps some of the  
4 employees. There is no formal employment  
5 agreements.

6 Q. You said perhaps some of the  
7 employees.

8 Is it possible you have NDAs for  
9 certain of your employees?

10 A. There may be.

11 Q. Do you know who those people would be?

12 A. Not offhand, no.

13 Q. Why would you need an NDA with anyone  
14 in your business?

15 A. Sometimes the clients require it.

16 Q. Is that the only reason?

17 A. Typically yes. We were not big on a  
18 lot of documentation.

19 Q. Do you have a handbook?

20 A. With HudsonGray?

21 Q. Yes.

22 A. We do not.

23 Q. No employee handbook?

24 A. No, we do not.

25 Q. Does Mia Blagsvedt -- can I call her

1 J. Wagner

2 Mia?

3 A. That's fine.

4 Q. Is Mia an employee of HudsonGray?

5 A. No, she is not.

6 Q. Has she ever been an employee of  
7 HudsonGray?

8 A. No.

9 Q. Has she ever had authority to sign  
10 contracts on behalf of HudsonGray?

11 A. No, she has not.

12 Q. Did you ever see a contract with her  
13 name on it?

14 A. From HudsonGray?

15 Q. Yes.

16 A. No.

17 Q. Did you happen to look at the  
18 documents that were produced from IT Savvy?

19 A. I have may gone through them. There  
20 was quite a number of documents.

21 MR. MATTHEWS: Objection.

22 Q. Did you say her name on anything?

23 MR. MATTHEWS: IT Savvy, were those  
24 documents produced?

25 MR. O'CONNOR: Yes. Came over to you

1 J. Wagner

2 yesterday.

3 MR. MATTHEWS: When?

4 MR. O'CONNOR: We will deal with it on  
5 a break. It came over yesterday.

6 MR. MATTHEWS: I am not aware of those  
7 documents being produced. I am just noting  
8 it for the record so the witness could not  
9 have produced them.

10 MR. O'CONNOR: I understand. They  
11 came in late.

12 BY MR. O'CONNOR:

13 Q. What does Mia do for HudsonGray?

14 A. At the very beginning Mia assisted me  
15 because I was doing everything on my own, so she  
16 helped me with assisting me in doing things that  
17 were required to set up the company.

18 Q. I asked you before about what  
19 HudsonGray had at its inception.

20 Do you remember that?

21 A. Yes.

22 Q. Did it have any goodwill?

23 MR. MATTHEWS: Objection.

24 Go ahead.

25 Q. I will withdraw the question.

1 J. Wagner

2 What is your background? Your  
3 educational background?

4 A. I have graduated from Perdue  
5 University and I have a Master's degree in  
6 industrial relations and labor history from  
7 Northern Illinois University.

8 Q. And have you been a CEO of any  
9 companies other than XA over your career?

10 A. Yes.

11 Q. What companies?

12 A. At the time a coatings company by the  
13 name of Master's Choice. Architectural coatings  
14 company.

15 Q. Anyone else?

16 A. Not that I recall the title.

17 Q. Did you ever hear of a company called  
18 Powermag, P-O-W-E-R-M-A-G?

19 A. Yes. My title there is technically  
20 the manager. It is an LLC but I would also be  
21 considered the CEO of Powermag.

22 Q. Do you understand what the concept of  
23 goodwill is?

24 A. It would probably be more helpful if  
25 you tell me what your definition is.

1 J. Wagner

2 Q. Sir, I am not here to answer  
3 questions. I am asking you if you know. If you  
4 don't know just say I don't know.

5 A. In that context I don't know exactly  
6 what you are looking for.

7 Q. Did you believe that when you formed  
8 HudsonGray, the day you formed it did it have any  
9 goodwill in the eyes of the accounting industry,  
10 do you know?

11 A. On the day it was formed, no.

12 Q. How about the day after?

13 A. It's an nebulous question. It depends  
14 on what happens over time with the company.

15 Q. In your view, how does it build up  
16 goodwill?

17 MR. MATTHEWS: Off the record.

18 (Discussion off the record.)

19 MR. MATTHEWS: I want to note that  
20 Mrs. Laken appeared and counsel has  
21 represented that she is here as a party  
22 representative of the plaintiff.

23 MR. O'CONNOR: I did.

24 BY MR. O'CONNOR:

25 Q. Now I asked you a question about

1 J. Wagner

2 goodwill and I wanted to know from you in your  
3 view you said HudsonGray had no goodwill when it  
4 was formed; right?

5 A. Correct.

6 Q. And then you say it builds up after  
7 some time; right?

8 A. Correct.

9 Q. And then in your view, what causes a  
10 company to build up goodwill over time?

11 A. The history of operations and  
12 performance depending on what industry it is  
13 operating in.

14 MR. O'CONNOR: Please mark this as HG  
15 Exhibit 2.

16 (HG Exhibit 2, a February 24, 2014  
17 e-mail from Geomatic Consultants to a  
18 recipient, marked for identification, as of  
19 this date.)

20 Q. I would like to show you what has been  
21 marked as HG 2. It is a February 24, 2014 e-mail  
22 from Geomatic Consultants to a recipient.

23 Do you know who that recipient is?

24 A. No, I don't.

25 Q. Have you ever heard of that name

1 J. Wagner

2 that's indicated there?

3 A. I have not.

4 Q. Have you ever had any dealings with  
5 anyone from Jonathan Adler?

6 A. Not to my knowledge, no.

7 Q. Geomatic Consultants is the company  
8 that was hired by HudsonGray to perform  
9 construction services at your premises; right?

10 A. That's correct.

11 Q. When was the first time that  
12 HudsonGray contacted the landlord about taking  
13 space in the building that you currently occupy?

14 A. I don't recall exactly. At some point  
15 in February or March of 2014.

16 Q. Who was it that made contact with the  
17 landlord from -- strike that.

18 Did you personally make contact with  
19 the landlord for the first time?

20 A. To the best of my recollection, yes.

21 Q. How did you do that?

22 A. I don't recall if it was a phone call  
23 to set a meeting or we just had a meeting. There  
24 was a space that became available and I met with  
25 them to discuss leasing the space.

1 J. Wagner

2 Q. How did you find out about the space?

3 A. Darren told me there was a space in  
4 the building that was available.

5 Q. And that would have been in February  
6 or March; right?

7 A. Correct.

8 Q. So you must have known that you were  
9 thinking of forming your own company; right?

10 A. Correct.

11 Q. And you had spoken to him about that;  
12 right?

13 A. Correct.

14 Q. And you had met with him and discussed  
15 it; right?

16 A. Correct.

17 Q. And the space that you ended up  
18 leasing on behalf of HudsonGray is approximately  
19 how many square feet?

20 A. Approximately, four thousand.

21 Q. Four thousand?

22 A. Thirty-five hundred, four thousand. I  
23 don't recall the exact amount of space.

24 Q. How many square feet did XA have  
25 downstairs?



1 J. Wagner

2 A. Downstairs where?

3 Q. In the same building.

4 A. I don't know how many square feet.

5 Q. You were the CEO of the company and  
6 you don't know how many square feet you had --

7 A. Somewhere the same size, thirty-five  
8 hundred, four thousand square feet. I don't know  
9 the exact number.

10 Q. How many employees when you resigned  
11 from XA, how many employees did XA have in New  
12 York?

13 A. I don't recall exactly.

14 Q. Can you give me a ballpark number?

15 A. Eight to ten.

16 Q. So is it fair to say that you were  
17 pretty confident you were going to have a company  
18 that had similar number of employees in short  
19 order?

20 MR. MATTHEWS: Objection.

21 Go ahead.

22 A. I wouldn't put it that way. I was  
23 certainly anticipating having an office location  
24 and finding office space in New York is pretty  
25 difficult. So it is a matter of my priority was

1 J. Wagner

2 more about making sure I had office space  
3 allocated.

4 Q. What were you paying per square foot?

5 A. I don't recall.

6 Q. You have a lease; right?

7 A. Correct.

8 Q. Did you produce the lease in this  
9 litigation, to your knowledge?

10 A. Yes, I believe I did.

11 Q. And how many years is the lease?

12 A. I don't recall offhand.

13 Q. Is it more than five?

14 A. I don't recall.

15 Q. Did you provide a guarantee for the  
16 lease?

17 A. I believe I did.

18 Q. Was it a personal guarantee of the  
19 payment obligations or was it a good guy?

20 A. I believe it is a good guy. I am not  
21 sure but I believe that's what it is.

22 Q. Did anyone else provide a personal  
23 guarantee of any kind to the landlord?

24 A. Not that I recall.

25 Q. Who is Brad Powers?

1 J. Wagner

2 A. Brad Powers is a business person who  
3 has companies in New York that do, I believe  
4 public relations and marketing and digital  
5 marketing.

6 Q. When was the last time you spoke to  
7 Brad Powers about HudsonGray?

8 A. It's been years.

9 Q. Have you spoken to him about his  
10 deposition?

11 A. No.

12 Q. You didn't reach out to him?

13 A. No.

14 Q. Did he reach out to you?

15 A. No.

16 Q. Did he text you?

17 A. No.

18 Q. Did Brad Powers ever put money into  
19 HudsonGray?

20 A. Yes. Originally Brad Powers was an  
21 investor that was strategic in the sense that he  
22 was interested in investing in HudsonGray and also  
23 felt that he had some significant client  
24 opportunities as well.

25 Q. How much did he put in?

1 J. Wagner

2 A. A hundred thousand.

3 Q. Did he put it in personally or was it  
4 through a company, do you know?

5 A. I don't recall.

6 Q. Was there any written agreement  
7 between either you or HudsonGray on the one hand  
8 and Brad Powers on the other?

9 A. I don't recall. There was a much  
10 larger anticipated investment from Brad Powers  
11 that never materialized. At this point I believe  
12 Brad Powers has a warrant position in the company.

13 Q. What are the terms of that warrant?

14 A. I don't recall exactly. Something  
15 around an ability to exercise warrants if there is  
16 a future funding in the company at the same rate  
17 that the new investment would be as far as  
18 valuation. It was an accomodation. There was a  
19 much larger investment that was anticipated and  
20 when there was only a hundred thousand put in it  
21 was discussed among the attorneys and they felt  
22 the warrant coverage was the most expedient way to  
23 handle the investment.

24 Q. So is it fair to say that although  
25 when he first invested it wasn't intended to give

1 J. Wagner

2 him a warrant but that's what you gave him?

3 A. I think it ended up that way because  
4 the investment structure was much different and  
5 much larger at the beginning of the discussions  
6 with him.

7 Q. And what were you anticipating getting  
8 out of Brad Powers in terms of investment?

9 A. I don't recall exactly. It was maybe  
10 a couple of million dollars.

11 Q. Is there some reason why Brad Powers  
12 decided not to invest anything more than a hundred  
13 thousand?

14 A. I think he was unable to secure the  
15 financial commitment.

16 Q. What do you base that on?

17 A. Supposition.

18 Q. So you don't know?

19 A. I don't know for sure.

20 Q. Did he ever tell you why?

21 A. No.

22 Q. Who is he in the business world? Does  
23 he have a company?

24 A. I believe he has a company by the name  
25 of Cupcake Digital. I don't know if it is still

1 J. Wagner

2 in operation or not.

3 Q. Where is that company?

4 A. It's in New York as far as I know.

5 Q. Did you ever visit it?

6 A. Yes.

7 Q. Do you remember where it is; where it  
8 is located?

9 A. Midtown I believe.

10 Q. Did you ever arrange for Brad Powers  
11 to come to any client events when you were at XA?

12 A. Not that I recall.

13 Q. Did you ever ask Jean Wilson to  
14 arrange for Brad Powers to attend a suits event?

15 A. Not that I recall.

16 Q. Did Brad Powers have any interactions  
17 with Jean Wilson, to your knowledge?

18 A. Again, not that I recall.

19 Q. Did Brad Powers have interactions with  
20 Mr. Andereck, to your knowledge?

21 A. I believe that Darren met Brad. We  
22 had a dinner at one point in the Spring of 2014.  
23 I believe Darren met Brad at that dinner. I don't  
24 recall the date or the location.

25 Q. Do you remember was it in Manhattan?

1 J. Wagner

2 A. It was yeah, in Manhattan somewhere.

3 Q. And did you charge the dinner that you  
4 had to XA by any chance?

5 A. I don't recall.

6 Q. What was the purpose of the dinner?

7 A. It was social and discussions of,  
8 basic discussions around potential client  
9 opportunities and more social than anything else.

10 Q. Are you telling me under oath that you  
11 didn't tell him about your plans to start your own  
12 company?

13 A. No. He was already involved in that  
14 the at that point, yes. I was talking with Brad  
15 about investing in HudsonGray.

16 Q. Did you ever provide Brad Powers with  
17 any forecast of what HudsonGray could earn?

18 MR. MATTHEWS: Objection.

19 Go ahead.

20 A. I don't recall.

21 Q. Did you provide Brad Powers with a  
22 single document that would tell him what he was  
23 investing in?

24 A. The documentation for the investment  
25 was handled by the attorneys. At the time they

1 J. Wagner

2 were working through Taft which was Shefsky and  
3 Froelich at the time.

4 Q. In the general ledger I see charges in  
5 HudsonGray for a company called Taft?

6 A. Correct.

7 Q. That's the law firm you keep referring  
8 to?

9 A. Taft is the corporate counsel for  
10 HudsonGray, yes.

11 Q. So your testimony is that you never  
12 looked at any forecasts of what HudsonGray may  
13 earn in the future in that time frame we are  
14 talking about?

15 A. I am --

16 MR. MATTHEWS: Go ahead.

17 A. I am sure that there was discussions  
18 and thought around that. I don't remember exactly  
19 what those numbers were and it was a startup  
20 company. So there certainly wasn't anything that  
21 would be able to be associated with specific  
22 numbers that would be hit over time because it was  
23 startup service company.

24 Q. Brad Powers met with you to talk about  
25 possibly investing; correct?



1 J. Wagner

2 A. Right.

3 Q. And you told him what your plans were;  
4 right?

5 A. Correct. There was a lot of  
6 discussion that Brad was focused on in terms of  
7 clients that he felt he could bring into -- that  
8 would be synergistic with that marketing company.

9 Q. Did you talk to him about your plan to  
10 go after XA's clients?

11 A. No, I did not.

12 Q. So Brad Powers as far as your  
13 discussions with him, you never mentioned to him  
14 that Darren's role would be bringing in XA's  
15 clients?

16 A. Darren's role would be bringing in  
17 clients.

18 Q. Whose clients?

19 A. Whatever clients we could procure for  
20 HudsonGray.

21 Q. Did you discuss in your discussions  
22 with Brad Powers the deep relationships that Mr.  
23 Andereck had with these clients?

24 A. I talked with Brad most likely to the  
25 best of my recollection, I talked with Brad about

1 J. Wagner

2 building a very strong team with a lot of industry  
3 experience that would be able to attract top tier  
4 clients.

5 Q. Did you happen to mention to him what  
6 you thought the profit margin would be for  
7 HudsonGray?

8 A. We talked about it in the sense that  
9 Brad was an interactive marketer which is  
10 associated with much higher margins than the  
11 service business on the event side. That was one  
12 of the reasons he was excited about potentially  
13 being part of it because he felt it could be  
14 strategic client relationships that would take  
15 interactive marketing services and combine them  
16 with event marketing.

17 Q. Did you give him an approximation of  
18 what you thought the profit margin could be for  
19 HudsonGray?

20 A. I may have. I don't recall.

21 Q. You don't know what it is?

22 A. Do I know what the profit margin for  
23 HudsonGray is?

24 Q. No. That was a poor question.

25 Do you remember what you said to him

1 J. Wagner

2 about what the profit margin could be?

3 A. I don't remember the specific numbers  
4 but I remember discussing that the event services  
5 industry is a low margin business with high top  
6 tier clients and interactive marketing as a higher  
7 margin basis traditionally than what event  
8 marketing does.

9 Q. Did Brad Powers ever in the past  
10 accuse you of not giving him full information with  
11 respect to your plans for HudsonGray?

12 A. Not that I recall.

13 Q. Has Brad Powers told you he will not  
14 give you any more money for HudsonGray?

15 A. That's out of context. Brad Powers  
16 was looking to invest a larger amount of money.  
17 He was only able to come up with a hundred  
18 thousand for whatever reason that was and that's  
19 the way it was left with Brad Powers. There  
20 wasn't an expectation, from my point of view, that  
21 Brad Powers would be investing more money in the  
22 future.

23 MR. O'CONNOR: Could you mark this as  
24 HG Exhibit 3.

25 (HG Exhibit 3, an e-mail that's been

1 J. Wagner

2 produced by HudsonGray dated March 3, 2014,  
3 marked for identification, as of this date.)

4 Q. I am showing you an e-mail that's been  
5 produced by HudsonGray dated March 3, 2014. It's  
6 been marked HG 3 for identification.

7 A. Okay.

8 Q. Have you ever seen this e-mail before?

9 A. I don't recall seeing this e-mail  
10 before, no.

11 Q. Were you involved in the production of  
12 records in this case? A lot of witnesses don't  
13 know what production means. Let me rephrase the  
14 question.

15 In litigation parties turn documents  
16 over to the other side.

17 A. Absolutely.

18 Q. Were you involved in the efforts to  
19 gather up records and give them to your counsel so  
20 they could be given to my client?

21 A. Yes. I was involved in that.

22 Q. What sources did you go to in order to  
23 produce records?

24 A. Whatever hard copies I could find to  
25 go through and electronic data.

1 J. Wagner

2 Q. What electronic data did you go  
3 through?

4 A. E-mails.

5 Q. What e-mails did you go through?

6 A. I went through the e-mails that I had  
7 and produced what was available.

8 Q. Is this an e-mail that you would have  
9 produced because it has your Bates stamp number on  
10 the bottom; do you see it?

11 A. Can you define what you mean by Bates  
12 stamp number?

13 Q. On the bottom right-hand corner, and I  
14 think your lawyer will agree with me, when it says  
15 DEF 00067604 and then 605, that's a designation  
16 that it came from your files.

17 A. From me personally or from HudsonGray?

18 Q. From HudsonGray.

19 A. Okay, well there is a difference.

20 Q. You are here as a corporate designee;  
21 right?

22 A. Correct.

23 Q. And I am just talking to you about  
24 HudsonGray's production; right?

25 A. Correct.

1 J. Wagner

2 Q. This came out of HudsonGray's files.

3 A. Okay.

4 Q. How did this come out of HudsonGray's  
5 files?

6 A. I am not sure.

7 Q. Do you see this e-mail is dated March  
8 3, 2014?

9 A. I see that.

10 Q. And this e-mail pertains to XA's  
11 affairs; correct?

12 A. Correct.

13 Q. You have no idea how you got it?

14 A. This e-mail?

15 Q. Yes.

16 A. No, I don't.

17 Q. It says Jean Wilson on March 3rd wrote  
18 to Mike Day and Darren Andereck "Mike, would you  
19 please added following individuals to the guest  
20 list for the suits event tomorrow. Brad and  
21 Jennifer Powers."

22 Do you see that?

23 A. I do.

24 Q. So tell me it in your own words why is  
25 the owner of a cupcake company being invited to a

1 J. Wagner

2 suits event?

3 A. I didn't recall this so I am not sure.  
4 Again, it is four and a half years ago.

5 Q. Does this e-mail help refresh your  
6 recollection of when you had the dinner with the  
7 man from the cupcake company?

8 A. As I said, it was sometime in the  
9 Spring.

10 MR. MATTHEWS: Objection.

11 It is not a cupcake company.

12 MR. O'CONNOR: I will withdraw it.

13 Q. Does this e-mail help you remember  
14 when you had the dinner between you and Brad  
15 Powers?

16 A. Again, as a said before, it was  
17 sometime in the Spring of 2014.

18 Q. Certainly before you left XA; right?

19 A. I can't recall if it was before or  
20 after I left XA for a dinner. It happened at some  
21 point in the Spring of 2014.

22 Q. And it was in Manhattan?

23 A. As far as I know, yes.

24 Q. Did you fly in just for the dinner?

25 A. I don't recall.

1 J. Wagner

2 Q. Did you charge your flight to XA?

3 A. I was coming out to New York for XA  
4 business consistently during that period of time.

5 Q. Did you disclose to senior management  
6 of XA that you were meeting with an investor to  
7 discuss the formation of a new company?

8 MR. MATTHEWS: Objection to form.

9 Go ahead.

10 A. Not that I recall.

11 Q. Do you know if Mr. Andereck who was  
12 the president of the company, who knew about this,  
13 do you know if he advised senior management of XA  
14 that he was meeting with investors about a new  
15 company?

16 MR. MATTHEWS: Objection to form.

17 Go ahead.

18 A. I don't know.

19 MR. O'CONNOR: Please mark this as HG  
20 Exhibit 4.

21 (HG Exhibit 4, an e-mail chain,  
22 marked for identification, as of this date.)

23 Q. I am showing you what's been marked as  
24 HG 4 for identification. It is an e-mail. It's a  
25 chain actually but on the top it is from someone



1 J. Wagner  
2 named Tara Chase to JWLSC at Comcast.net.

3 Do you see that?

4 A. Yes, I do.

5 Q. The date on that is March 17, 2014;  
6 right?

7 A. Correct.

8 Q. And is that e-mail address to which  
9 this was directed your private e-mail address?

10 A. It was at the time, yes.

11 Q. When did you get rid of it?

12 A. It's actually still an account that  
13 operates. I don't use it anymore. It is kind of  
14 a catch all for spam at this point.

15 Q. Did you ever delete e-mails from that  
16 account?

17 A. I do not.

18 Q. You don't, so you leave everything in  
19 there; right?

20 A. I looked at it recently. It's got a  
21 24-month retention on it and it seems that just  
22 keeps rolling.

23 Q. Your testimony is you have it set to  
24 delete anything --

25 A. I don't have it set.

1 J. Wagner

2 Q. I know you want to get your answers  
3 out, but if we are going to get out of here today  
4 you have to wait until I complete the question.

5 Your testimony is you have it set to  
6 delete anything that's older than 24 months?

7 A. No. There is an automatic deletion in  
8 the Comcast e-mail where it just retains things  
9 for two years.

10 Q. For two years?

11 A. For two years.

12 Q. Well, you produced records in this  
13 case; right?

14 A. I did.

15 Q. When did you preserve your evidence in  
16 this case?

17 MR. MATTHEWS: Objection to form.

18 Go ahead.

19 Q. When was the lawsuit filed; sir?

20 A. In September of 2014.

21 Q. What steps did you take in September  
22 of 2014 to secure that e-mail address, the e-mails  
23 that were in that account?

24 A. I didn't do anything with the account  
25 at that time.

1 J. Wagner

2 Q. When do you think you first went back  
3 to that account to see if you had e-mails that  
4 relate to the case?

5 A. I don't recall.

6 Q. So it is true that as of this moment  
7 you don't even recall going to look at that  
8 account; correct?

9 A. Correct.

10 Q. Do you remember being ordered by the  
11 court to go and look at all your private e-mails?

12 A. I did.

13 Q. You just told me you don't remember  
14 looking at this e-mail.

15 A. I was going back through the e-mail  
16 accounts that I had at the time.

17 Q. But you still have this e-mail  
18 account.

19 A. Right but I don't use this e-mail  
20 anymore.

21 Q. So you think that order from the court  
22 only required you to go back and look at accounts  
23 that were active at the time of the order; is that  
24 what you are telling me?

25 A. I am sorry.

1 J. Wagner

2 Say that again.

3 Q. You were ordered to go back over all  
4 your personal e-mail accounts and to see if there  
5 was anything relevant for this lawsuit.

6 Do you remember that?

7 A. Yes.

8 MR. MATTHEWS: Objection. That's not  
9 what the court ordered.

10 Q. Is it your testimony that the reason  
11 why you didn't look back at this e-mail account is  
12 because you didn't use it anymore?

13 A. It was an e-mail account I wasn't  
14 using anymore, correct.

15 Q. Did you e-mail people in the Spring of  
16 2014 about the work you were doing to set up a new  
17 company using this e-mail account?

18 A. Yes, I did.

19 Q. And it was more than just Geomatic, it  
20 was other people; right?

21 A. At the time and there was a HudsonGray  
22 e-mail that was set up and I began using that.

23 Q. But according to you because of the  
24 settings on your account all those e-mails are  
25 gone; right?

1 J. Wagner

2 A. In Comcast they only preserve the  
3 e-mails for a couple of years. I just found that  
4 out recently.

5 Q. Did you e-mail using that account with  
6 Mr. Andereck in the Spring of 2014?

7 A. I don't recall if I used that account  
8 or not.

9 Q. Was your use of that e-mail in the  
10 Spring of 2014 intended so that people at XA could  
11 not see who you were talking to?

12 A. No. It was a personal e-mail at the  
13 time.

14 Q. Is it your testimony that you just  
15 chose that e-mail, it had nothing to do with the  
16 fact that you didn't want XA to know what you were  
17 doing?

18 A. I wasn't using XA e-mails that would  
19 relate to HudsonGray business or the business that  
20 I was setting up.

21 Q. That's really what I am asking you.

22 A. Yes, that's correct.

23 Q. When you were setting up HudsonGray  
24 and doing all the HudsonGray affairs, you would  
25 use your own personal e-mail accounts; right?

1 J. Wagner

2 A. And eventually HudsonGray e-mail.

3 Q. When do you think you first got a  
4 HudsonGray e-mail?

5 A. Spring or early summer 2014. It was a  
6 GoDaddy account that was set up.

7 Q. So on the bottom of HG 4 it says "We  
8 have a prospective tenant who needs a CAD drawing  
9 of room 601."

10 Do you see that?

11 A. Yes.

12 Q. Why did you want a CAD drawing?

13 A. I assume this was to review the set up  
14 of the new office space.

15 Q. Now Mr. Andereck was helping you out  
16 with all of that, wasn't he?

17 MR. MATTHEWS: Objection to form.

18 Go ahead.

19 A. Mr. Andereck was engaged doing --  
20 coming up to an upfront event, a large event. I  
21 was doing the work with Geomatic.

22 Q. Is it your testimony under oath that  
23 Mr. Andereck had no interactions with Geomatic?

24 A. No. That's not my testimony. I am  
25 saying I was doing the majority of the work with

1 J. Wagner

2 Geomatic at the time.

3 Q. So some of the work was being done by  
4 Darren Andereck; correct?

5 A. I don't recall the exact details but I  
6 was the point person doing the setup of the  
7 office.

8 Q. Now if you look at the third page of  
9 this page 5 it is Bates stamped page 5, is that  
10 the layout of the former space, the space that you  
11 took over?

12 A. As far as I know, yes.

13 Q. Did you modify this space or is this  
14 basically what you have now?

15 A. There has been modifications.

16 Q. Can you tell me what they are?

17 A. Not offhand. There was a  
18 reconfiguration of the office space from the prior  
19 configuration that was there from the prior  
20 tenant.

21 Q. As you look at this schematic, you  
22 have a large conference room.

23 Is that still there?

24 A. There is still a conference room in  
25 the space, yes.

1 J. Wagner

2 Q. Is the space of that generally the  
3 same still?

4 A. It's been -- again, there has been  
5 modifications to it but in the general sense  
6 that's it.

7 Q. Now if you look on the right side of  
8 the schematic on Charlton Street, you see an  
9 office 601C?

10 A. Yes.

11 Q. Is that still there?

12 A. I don't recall if it is in that format  
13 or not. If the walls had been moved or if it is  
14 still in that same format.

15 Q. There is still an office there; right,  
16 today?

17 A. I don't recall the exact configuration  
18 of that.

19 Q. When was the last time you were there?

20 A. It's probably been a few months. Six  
21 months maybe.

22 Q. You haven't been to the office in six  
23 months?

24 A. Something in that range probably,  
25 yeah. I worked work out of Chicago.



1 J. Wagner

2 Q. What I am trying to get at is: Do you  
3 have an office here on this layout?

4 A. No.

5 Q. Does Mr. Andereck have an office?

6 A. Mr. Andereck works out of that office,  
7 yes.

8 Q. Do you know where his office is in  
9 relation to this schematic?

10 A. I do not.

11 Q. Is it a corner office?

12 A. I am not sure.

13 Q. What is Mr. Andereck's title for  
14 HudsonGray?

15 A. He is the president and creative  
16 director.

17 Could I take a break for the bathroom?

18 MR. O'CONNOR: Absolutely, sure.

19 (Recess taken.)

20 MR. MATTHEWS: I just want to note  
21 that during the break counsel graciously  
22 sent to me the response to the subpoena sent  
23 by IT Savvy. I did not receive it last  
24 night.

25 MR. O'CONNOR: Okay. Those documents

1 J. Wagner

2 were received late yesterday so.

3 Let's mark this as HG Exhibit 5.

4 (HG Exhibit 5, a document from the  
5 Delaware Division of Corporations Secretary  
6 of State website, marked for identification,  
7 as of this date.)

8 Q. I have shown you what has been marked  
9 HudsonGray 5 which is from the Delaware Division  
10 of Corporations Secretary of State website and I  
11 wanted to ask you does this tell you the exact  
12 incorporation date of HudsonGray?

13 A. That looks correct.

14 Q. That would be March 14, 2014; correct?

15 A. Correct.

16 Q. Are you aware of an entity called  
17 HudsonGray LLC? Is there any such entity?

18 A. Not that I am aware of.

19 MR. O'CONNOR: Off the record.

20 (Discussion off the record.)

21 BY MR. O'CONNOR:

22 Q. Can we agree that you formed  
23 HudsonGray before you resigned from XA?

24 A. Correct.

25 Q. Do you remember when you received your

1 J. Wagner

2 tax ID number?

3 A. I don't recall.

4 MR. O'CONNOR: Please mark this next  
5 document as HG Exhibit 6.

6 (HG Exhibit 6, a document Bates  
7 stamped Defendant 68980 from the IRS, marked  
8 for identification, as of this date.)

9 Q. I have shown you what has been marked  
10 as HG 6 which is from defendants' production. By  
11 the way, this is marked confidential. It is  
12 Defendant 68980 from the IRS.

13 Do you see that?

14 A. Yes, I do.

15 Q. And it has a date on the notice of  
16 what?

17 A. April 1st.

18 Q. Is that the date that you received --  
19 that's April 1, 2014?

20 A. Sorry. April 1, 2014.

21 Q. Is that the date when HudsonGray  
22 received an employer identification number?

23 A. From the document, yes.

24 Q. Did you have any employees in the  
25 month of April?

1 J. Wagner

2 A. Not that I recall. It was basically  
3 just me working at that point and Mia was  
4 assisting.

5 Q. Was Mia paid?

6 A. I don't recall what was, if anything  
7 was set you up at that point.

8 Q. You said before she helps out.

9 Has Mia ever received any compensation  
10 from HudsonGray?

11 A. She may have at the very beginning but  
12 she was not involved. Over time she was helping  
13 me during the formation period.

14 Q. So she may have received payment as a  
15 1099 worker?

16 A. Perhaps. I don't recall. I have to  
17 check that.

18 Q. Is it possible she received wages as a  
19 W-2 earner?

20 A. I don't believe so, but again I would  
21 have to check that.

22 Q. HudsonGray, its Worker's Compensation  
23 employment -- I'm sorry. Its Worker's  
24 Compensation insurance was issued from White  
25 Mountains Insurance Group.

1 J. Wagner

2 Does that sound familiar?

3 A. It does.

4 Q. And that was issued in May, of the  
5 first week of May 2014; correct?

6 A. That sounds correct.

7 Q. Do you still use White Mountains  
8 Insurance Group?

9 A. I am not sure.

10 MR. O'CONNOR: Please mark this as HG  
11 Exhibit 7.

12 (HG Exhibit 7, a document Bates  
13 stamped Creative IT 1450 and 1451, marked  
14 for identification, as of this date.)

15 Q. Showing you what has been marked for  
16 identification as HG 7 which is Creative IT 1450  
17 and 1451.

18 Have you ever seen this e-mail before?

19 A. I don't recall this e-mail.

20 Q. The bottom of the e-mail is from QBESS  
21 support to Jean Wilson and it is dated April 15,  
22 2014.

23 Do you see that?

24 A. I do.

25 Q. And it says "QuickBooks Plus Hosting

1 J. Wagner

2 Welcome."

3 Right?

4 A. I do see that.

5 Q. And it provides the user name of Jean  
6 Wilson and it provides a password.

7 Do you see that?

8 A. I do.

9 Q. And then this was then forwarded from  
10 Jean Wilson to David Tuma.

11 Do you see that?

12 A. I do.

13 Q. And then it was forwarded from David  
14 Tuma to you at HudsonGray.

15 Do you see that?

16 A. I do.

17 Q. Can you give me an explanation in your  
18 own words why HudsonGray would be entitled to a  
19 user name and password for a QuickBooks plus  
20 hosting service that was signed up by Jean Wilson?

21 A. So to the best of my recollection, the  
22 way this is set up is talking about the Right  
23 Networks control panel. Right Networks is a  
24 hosted remote desktop service and there is a  
25 shared platform among the accountant that we use

1 J. Wagner

2 which is David Rice. So there is a number of  
3 clients that all use the Right Networks platform  
4 for the QuickBooks hosting.

5 Q. For HudsonGray?

6 A. For HudsonGray and for a number of  
7 other companies. They all use Right Networks and  
8 David Rice is the shared accountant.

9 Q. Do you know who paid for this, by the  
10 way?

11 A. I don't.

12 Q. Are you aware whether this was charged  
13 to XA?

14 A. I am not aware of that.

15 Q. That wouldn't be right, that wouldn't  
16 be appropriate in your view, would it?

17 MR. MATTHEWS: Objection.

18 Go ahead.

19 A. No. Again, I was not aware of that.

20 Q. Now HudsonGray uses QuickBooks in its  
21 current operations; right?

22 A. That's correct.

23 Q. And HudsonGray utilized QuickBooks the  
24 day it opened its doors; correct?

25 A. I don't know about the day it opened

1 J. Wagner

2 its doors, but we use QuickBooks, yes.

3 Q. And Mr. Tuma helped set that up;  
4 correct?

5 A. David Tuma does IT and David Rice is  
6 the accountant that a number of companies use on  
7 that Right Networks platform.

8 Q. And you still use the same platform;  
9 correct?

10 A. Yes. Again, the Right Networks  
11 platform is still in existence, yes.

12 Q. Did you tell anyone at XA that you had  
13 come into possession of their user name and  
14 password?

15 MR. MATTHEWS: Objection.

16 A. I am not sure if that's user name for  
17 QuickBooks or Right Networks. I don't know that.

18 Q. Who would know?

19 A. Jean Wilson would.

20 Q. Did you authorize her to send that to  
21 David Tuma?

22 A. Not that I recall.

23 MR. O'CONNOR: Please mark this  
24 document as HG Exhibit 8.

25 (HG Exhibit 8, a document Bates



1 J. Wagner

2 stamped Creative IT 1389 dated April 23,  
3 2014, marked for identification, as of this  
4 date.)

5 Q. I am showing you what has been marked  
6 as HG 8 Creative IT 1389 dated April 23, 2014.

7 Have you ever seen this before?

8 A. Not that I am aware of, but I am  
9 familiar with it now.

10 Q. HudsonGray in April of 2014 was using  
11 David Tuma to help it set up its office; right?

12 A. That's correct.

13 Q. Did you have a contract with David  
14 Tuma?

15 A. I don't recall a written contract with  
16 David Tuma. He was a paid vendor at the time.

17 Q. He was?

18 A. He was performing services for us.

19 Q. For you.

20 Well, those are two different things;  
21 right?

22 A. Sorry.

23 In terms of?

24 Q. Well, you said two different things.

25 You said he was performing services

1 J. Wagner

2 for HudsonGray; right?

3 A. Correct.

4 Q. And then you said he was a paid vendor  
5 at the time; right?

6 A. For HudsonGray.

7 Q. Are you aware of any payments made to  
8 David Tuma prior to June of 2014?

9 A. Any payments made to David Tuma?

10 Q. From HudsonGray.

11 A. Not that -- I mean I don't have any  
12 accounting records. I know we were paying David  
13 Tuma for his services.

14 Q. When did you start paying?

15 A. I don't recall.

16 Q. Can you tell me when was the first  
17 invoice you got from David Tuma?

18 A. I don't remember. It was four and a  
19 half years ago.

20 Q. We will get to that.

21 He says "Josh will be sending over  
22 some quotes and proposals. Hosted services  
23 terminal or citrix server."

24 Do you see that?

25 A. Yes, I do.

1 J. Wagner

2 Q. So at that time Mr. Tuma was talking  
3 to you about using hosted services; right?

4 A. Correct.

5 Q. And by this time had there been any  
6 upgrades to the XA information technology  
7 infrastructure in New York?

8 A. In April of 2014 there had been  
9 significant upgrades to the IT in New York.

10 Q. For XA?

11 A. For XA, correct.

12 Q. And you authorized all that; correct?

13 A. That's right.

14 Q. And XA paid for it; right?

15 A. For the equipment that was in the XA  
16 office yes, they did.

17 MR. O'CONNOR: Please mark this  
18 document as HG Exhibit 9.

19 (HG Exhibit 9, an April 27, 2014  
20 e-mail exchange Bates stamped Creative IT  
21 01390-1391, marked for identification, as of  
22 this date.)

23 Q. I am showing you what has been marked  
24 as HG 9 which is an April 27, 2014 e-mail exchange  
25 marked Creative IT 01390-1391.

1 J. Wagner

2 A. Okay.

3 Q. Have you ever seen this before?

4 A. I don't recall it offhand, but it came  
5 to my e-mail.

6 Q. Are you denying you received this?

7 A. No, I am not.

8 Q. Now this is IT Savvy providing a  
9 proposal to, it says Mia and Joe.

10 That's you and Miss Blagsvedt?

11 A. Correct.

12 Q. And he outlines the proposal; correct?

13 A. Josh Gill from IT Savvy?

14 Q. Yes.

15 A. That's correct.

16 Q. Is IT Savvy still providing services  
17 for you at HudsonGray?

18 A. I don't believe they are working with  
19 us anymore. They were very involved in the  
20 beginning.

21 Q. When do you think they stopped?

22 A. I don't recall.

23 Q. How much was the construction work  
24 that you did on the space that you occupy at 601,  
25 333 Hudson Street, do you remember?

1 J. Wagner

2 A. Can you say it again?

3 Q. How much money did you spend on  
4 building out the space?

5 A. I don't recall the exact number.

6 Q. Can you give me an approximation?

7 A. I would estimate something in the  
8 range of probably maybe sixty to a hundred  
9 thousand dollars. Again, very rough estimate. I  
10 don't have the numbers in front of me.

11 MR. O'CONNOR: Please mark this  
12 document as HG Exhibit 10.

13 (HG Exhibit 10, a May 8, 2014  
14 exchange containing a Dell quotation Bates  
15 stamped Creative IT 1414 through 1419,  
16 marked for identification, as of this date.)

17 Q. Sir, have you ever seen HG 10 before?

18 A. I am just getting it right now.

19 Q. I am going to speak on the record  
20 while you are looking at it. This is a May 8,  
21 2014 exchange and it contains a Dell quotation and  
22 it is marked Creative IT 1414 through 1419.

23 A. Okay.

24 Q. Does this look familiar to you?

25 A. Again, it's four and a half years ago.

1 J. Wagner

2 I am reviewing it right now.

3 Q. Look at page 2 if you would please.

4 A. Okay.

5 Q. Do you see the quote date? What do  
6 you see on the bottom?

7 A. On page 2?

8 Q. Yes, sir, second page.

9 A. Quote date is May 7, 2014.

10 Q. And who does it say is the delivery  
11 contact for the Dell equipment that's going to  
12 HudsonGray?

13 A. Darren.

14 Q. At his home address; right?

15 A. That says 33 Hudson Street.

16 Q. Look at the third page.

17 A. I don't know if that's Darren's home  
18 address.

19 Q. The delivery address is 360 Furman  
20 Street; right?

21 A. Yes, it is.

22 Q. You don't know if that's his address?

23 A. I am not sure if that's his home  
24 address.

25 Q. Have you ever been to his home?

1 J. Wagner

2 A. I have not.

3 Q. Do you see anywhere on this order a  
4 server?

5 A. There is a lot of IT items on here  
6 that's called Towers, and OptiPlex and things like  
7 that. I don't know what a server is or it isn't.

8 Q. You are not sure what it is?

9 A. I am not an IT guy.

10 Q. Did HudsonGray ever buy a server?

11 A. I believe that we did buy servers,  
12 yes.

13 Q. Where did you buy them from?

14 A. I don't recall. I didn't handle that  
15 directly.

16 Q. Who handled that, Darren?

17 A. No. That would have been sourced  
18 through David Tuma.

19 Q. Do you know how much you paid for this  
20 server that you are not sure you bought?

21 A. I don't recall offhand.

22 MR. O'CONNOR: Please mark as HG  
23 Exhibit 11 this next document.

24 (HG Exhibit 11, a May 16, 2014  
25 e-mail Bates stamped Creative IT 01426

1 J. Wagner

2 through 27, marked for identification, as of  
3 this date.)

4 Q. I am showing you what has been marked  
5 as HG 11 and it is a May 16, 2014 e-mail marked  
6 Creative IT 01426 through 27.

7 Have you ever seen this before?

8 A. I am just reviewing it now.

9 Okay.

10 Q. Have you ever seen it before?

11 A. I don't recall the e-mail, but I am  
12 sure it is something that came to my e-mail  
13 address.

14 Q. Mr. Tuma wrote to you on May 16th and  
15 said "Looks like Dell messed up. They shipped it  
16 to Darren's apartment instead of Studio AG at the  
17 333 address."

18 Do you see that?

19 A. I do see that.

20 Q. Why would the new computer equipment  
21 be shipped to a current employee of XA?

22 A. I don't recall at the time.

23 Q. And why would it ever have been  
24 shipped to Studio AG?

25 A. I don't know why they are referencing



1 J. Wagner

2 Studio AG on here or why David was doing that.

3 You have to ask David.

4 Q. The equipment did in fact go to Mr.  
5 Andereck's apartment?

6 A. Yeah. Again, I am assuming this is  
7 the equipment that went to HudsonGray but I don't  
8 know about whether it went to the apartment or  
9 not. I am assuming it did.

10 MR. O'CONNOR: Please mark this  
11 document as HG Exhibit 12.

12 (HG Exhibit 12, a document Bates  
13 stamped Geomatic CON 15, marked for  
14 identification, as of this date.)

15 Q. I am showing you HG 12 which is marked  
16 Geomatic CON 15.

17 A. Okay.

18 Q. Have you ever seen this before?

19 A. I don't recall seeing it, but I am  
20 reviewing it right now.

21 Q. This is a May 20, 2014 e-mail from  
22 Geomatic to you and to Darren; correct?

23 A. Correct.

24 Q. And when it says JDD underscore DA at  
25 MSN.com, that's Darren Andereck's home e-mail;

1 J. Wagner

2 right, his personal e-mail?

3 A. Personal e-mail, yes.

4 Q. And you communicated with him on that  
5 e-mail; correct?

6 A. Yes, that's correct.

7 Q. And you communicated with him about  
8 things that related to HudsonGray; correct?

9 A. That's correct.

10 Q. And do you have some explanation as to  
11 why we don't have those e-mails?

12 A. I do not.

13 Q. Do you know if anyone from HudsonGray  
14 insured that its employee, its president Darren  
15 Andereck, went and looked at that e-mail account  
16 to see where the e-mails are?

17 A. You have to ask Darren that.

18 Q. My question was: Did anyone at  
19 HudsonGray instruct its employee and its president  
20 Darren Andereck to look at his personal e-mail  
21 accounts?

22 A. I think everybody went through and  
23 searched on key words to produce e-mails that were  
24 requested. That was a production exercise that we  
25 did on the e-mails.

1 J. Wagner

2 Q. Your testimony is that Mr. Andereck  
3 went to his personal account and searched his  
4 personal account; is that right?

5 A. I am not testifying as to what Darren  
6 did. I am saying the instructions that we had to  
7 all the individual defendants were to go through a  
8 list of keyword searches that were provided by  
9 prior counsel and provide whatever e-mails we  
10 could find using those keyword searches.

11 Q. It says "We thank you for your  
12 payments first wire transfer deposit of nine  
13 thousand dollars and second wire transfer deposit  
14 of nine thousand dollars in which at this point we  
15 are 95 percent complete with the job."

16 Do you see that?

17 A. I see that.

18 Q. And he says the electrical in your  
19 space is 80 percent done; correct?

20 A. Yes.

21 Q. Now that's two days before Mr.  
22 Andereck resigns; correct?

23 A. I believe that's correct.

24 MR. O'CONNOR: Please mark this next  
25 document as HG Exhibit 13.

1 J. Wagner

2 (HG Exhibit 13, a May 12, 2014  
3 exchange but it actually begins on April 15,  
4 2014 Bates stamped DEF 77864 and it is also  
5 marked confidential, marked for  
6 identification, as of this date.)

7 Q. Have you ever seen this document  
8 marked HG 13?

9 A. Again, I don't recall exactly but I am  
10 looking at it now.

11 Q. For the record, this is a May 12, 2014  
12 exchange but it actually throughout, it begins on  
13 April 15, 2014 and it is marked DEF 77864 and it  
14 is also marked confidential.

15 A. Okay.

16 Q. Do you remember our discussion before  
17 when I told you that anything with a DEF is a  
18 defendant document?

19 A. Yes, sir. I recall that.

20 Q. Do you have any reason to believe this  
21 is not from your own files?

22 A. I do not.

23 Q. Do you know why it is marked  
24 confidential?

25 A. I do not.

1 J. Wagner

2 Q. Do you think it is confidential? You  
3 just looked at it. Do you think it is  
4 confidential?

5 A. I am not sure if it is confidential  
6 due to the contract or company information. I  
7 don't know why it is confidential.

8 Q. Look looks like it is the fourth page  
9 in and I want to direct your attention to a  
10 statement by Mia. On April 15, 2014 to Konica  
11 Minolta quote "I am following up a voicemail I  
12 left for you at 312 701 9221. I am with a new  
13 marketing company and was referred to you from  
14 XA."

15 A. Okay.

16 Q. That's a false statement; right?

17 A. I don't know that that's a false  
18 statement.

19 Q. Do you think that XA referred Mia to  
20 Konica Minolta so that they could set up copiers  
21 for a competing company?

22 A. I don't know where that reference is.  
23 I don't know if that was a mistake she put when  
24 she meant to say HudsonGray. I don't know what  
25 the attributing XA is to this statement.

1 J. Wagner

2 Q. Are you aware of anyone at XA --  
3 strike that.

4 Aside from Jean Wilson, are you aware  
5 of anyone at XA who would have given you that kind  
6 of a referral?

7 A. No, I am not. And again, I am not  
8 even sure if that's a mistake or what that  
9 reference is that Mia was talking about in April  
10 of 2014.

11 MR. O'CONNOR: Please mark this  
12 document as HG Exhibit 14.

13 (HG Exhibit 14, a document Bates  
14 stamped Creative IT 01392, marked for  
15 identification, as of this date.)

16 Q. I put in front of you what has been  
17 marked as HG 14 Creative IT 01392.

18 A. Okay.

19 Q. Have you ever seen this before?

20 A. Again, I don't recall offhand but I am  
21 looking at it now.

22 Q. It says "Hi Joe, do you have a few min  
23 today to listen to my thoughts regarding the  
24 hosted services and/or local server et cetera?"

25 Do you see that?

1 J. Wagner

2 A. I do.

3 Q. Do you remember the e-mail?

4 A. I don't remember it four and a half  
5 years ago. I am looking at it now.

6 Q. So your testimony is you don't  
7 remember -- strike that.

8 Did you have a conversation that day  
9 about this?

10 A. I don't recall if I talked to David  
11 Tuma four and a half years ago. I am looking at  
12 the e-mail that's produced now.

13 Q. I am going to give you the next  
14 e-mail.

15 MR. O'CONNOR: Please mark these two  
16 documents together as the next exhibit  
17 Exhibit 15.

18 (HG Exhibit 15, a document Bates  
19 stamped Creative IT 01393 through 95, marked  
20 for identification, as of this date.)

21 Q. I have put in front of you what is  
22 marked HG 15.

23 A. Okay.

24 Q. And it is Creative IT 01393 through 95  
25 and on the back of this document is a printout of

1 J. Wagner

2 the metadata from this document; okay. So first I  
3 would like you to look at the e-mail.

4 A. Okay.

5 Q. Have you ever seen this e-mail before?

6 A. Again, I don't recall specifically but  
7 I am looking at it now.

8 Q. Was this one of the e-mails you looked  
9 at the other day when you were preparing?

10 A. No, it was not.

11 MR. MATTHEWS: Is this metadata that's  
12 attached here part of the production from  
13 Creative IT?

14 MR. O'CONNOR: No. All you do is open  
15 it up and it is right there.

16 MR. MATTHEWS: We didn't receive the  
17 production in native format.

18 MR. O'CONNOR: I gave it to you the  
19 same way I got it. So I was able to look at  
20 the metadata.

21 BY MR. O'CONNOR:

22 Q. I am not going to ask you in detail  
23 about this. I am just going to ask you about a  
24 couple of lines, but you are welcome to read the  
25 whole thing. I do want to get you out of here for



1 J. Wagner

2 your flight.

3 A. I understand.

4 Q. In the second paragraph it says "For  
5 now my 'cost conscious' idea is to put a 'file  
6 server' into the New York office. "

7 A. Okay.

8 Q. Do you see how he puts the word file  
9 server into air quotes? Do you know what he means  
10 by that?

11 A. I do not. I believe he is indicating  
12 a file server.

13 Q. Is it your testimony on May 1, 2014  
14 that you did not have access to XA server?

15 A. I am sorry. Say that again.

16 Q. On May 1, 2014 did you still have  
17 access to XA server?

18 A. I don't believe that I did.

19 Q. No?

20 A. I don't recall. I don't believe I  
21 did.

22 Q. You don't recall?

23 A. I don't recall.

24 Q. You can see here though he is talking  
25 about he still hasn't made up his mind about what

1 J. Wagner

2 to do with the server; correct?

3 A. From David Tuma?

4 Q. Yes.

5 A. Correct.

6 Q. And he is the guy that is working for  
7 HudsonGray; correct?

8 A. That's correct.

9 Q. And he goes on to say he wants them to  
10 give him a quote for a good Dell file server.

11 Do you see that?

12 A. I do.

13 Q. Now the metadata, do you see on the  
14 last page there is a BCC to someone at Jean at  
15 freckle farm home.com?

16 A. Yes.

17 Q. Who is that?

18 A. I assume that's Jean Wilson.

19 Q. Can you explain to me in your own  
20 words why Jean Wilson would be copied on the plans  
21 for HudsonGray to build out its IT infrastructure?

22 A. I don't know why David Tuma would copy  
23 her.

24 Q. Are you saying you were unaware that  
25 Jean at freckle farm home.com was receiving

1 J. Wagner

2 e-mails at that time?

3 A. I wasn't aware that she received this  
4 e-mail, no.

5 Q. But you were aware she was in the  
6 loop; right?

7 A. I was not aware that she was in the  
8 loop. That's kind of a broad statement.

9 What do you mean?

10 Q. Did you communicate with Jean Wilson  
11 in the time frame of May and June of 2014 about  
12 the work you were doing to set up HudsonGray?

13 A. We may have had some conversations. I  
14 don't recall specifics.

15 Q. And you may have had e-mails with her;  
16 correct?

17 A. I may have.

18 Q. And those e-mails were all through  
19 Jean at freckle farm home.com; correct?

20 A. I don't know that.

21 Q. Did you ask David Tuma to set up Jean  
22 at freckle farm home.com?

23 A. To set up her e-mail account?

24 Q. Yes.

25 A. Not that I am aware of.

1 J. Wagner

2 Q. Would you agree with me that it would  
3 not be appropriate for XA to have paid to set up  
4 Jean at freckle farm home.com?

5 A. I would agree with that.

6 MR. O'CONNOR: Please mark this  
7 document as HG Exhibit 16.

8 (HG Exhibit 16, a May 5, 2014 e-mail  
9 Bates stamped Creative IT 01404, marked for  
10 identification, as of this date.)

11 Q. I put in front of you what's been  
12 marked HG 16.

13 Have you seen this before, sir?

14 A. Again, I don't recall seeing it but I  
15 am looking at it now.

16 Q. You are done?

17 A. I am.

18 Q. So this is a May 5, 2014 e-mail  
19 Creative IT 01404.

20 Did you receive this e-mail, sir?

21 A. Again, I don't recall offhand but I am  
22 looking at it now. It came to my e-mail address  
23 at HudsonGray.

24 Q. Do you have any reason to doubt you  
25 got this e-mail?

1 J. Wagner

2 A. I do not.

3 Q. And among the recipients of the e-mail  
4 is a cc to Jean at freckle farm home.com; correct?

5 A. That's correct.

6 Q. And as of that date you knew that that  
7 meant Jean Wilson received that e-mail; correct?

8 A. That's correct.

9 Q. Do you know if she ever disclosed to  
10 XA she was being copied on e-mails between your IT  
11 consultant and you about setting up a new company?

12 A. I don't know if she disclosed that or  
13 not.

14 Q. And this e-mail says that you had  
15 gotten approval for fifty thousand dollars in  
16 credit from Dell; correct?

17 A. That's what it says, yes.

18 MR. O'CONNOR: Mark this document as  
19 HG Exhibit 17.

20 (HG Exhibit 17, an e-mail from David  
21 Tuma to Joseph Wagner and to Mia Bates  
22 stamped Creative IT 01406, marked for  
23 identification, as of this date.)

24 Q. Showing you what has been marked HG 17  
25 Bates stamped Creative IT 01406. It is an e-mail

1 J. Wagner  
2 from David Tuma to you and to Mia.

3 A. Okay.

4 Q. And it is dated May 7, 2014.

5 A. Okay.

6 Q. Did you receive this e-mail?

7 A. I assume that I did.

8 Q. The e-mail states that three Imacs,  
9 and one Mac Pro have been purchased using  
10 Estelle's visa.

11 Do you see that?

12 A. Yes.

13 Q. Is that Estelle Pizzo?

14 A. That's correct.

15 Q. And does she have any formal  
16 employment with HudsonGray?

17 A. She does not.

18 Q. Can you explain to me why Estelle  
19 Pizzo's visa would be used to buy HudsonGray's  
20 equipment?

21 A. I am not sure why that was happening  
22 at the time.

23 Q. And Estelle Pizzo is in Chicago;  
24 right?

25 A. That's correct.

1 J. Wagner

2 Q. And that's something that you think  
3 Jean Wilson had arranged?

4 A. I don't know that.

5 Q. It's possible?

6 A. Again, I don't know that.

7 Q. But you didn't do it; right?

8 A. I didn't place an order on Estelle's  
9 visa, no.

10 Q. And you didn't know it was happening  
11 at the time?

12 A. I was copied on the e-mail.

13 Q. Do you see at the bottom he says  
14 "Note, still working on the hosted file server  
15 need."?

16 A. Okay.

17 Q. You still don't have a hosted file  
18 server; right?

19 A. That's correct.

20 MR. O'CONNOR: Please mark this next  
21 document as HG Exhibit 18.

22 (HG Exhibit 18, an e-mail exchange  
23 on May 21, 2014 Bates stamped Creative IT  
24 01428-29, marked for identification, as of  
25 this date.)

1 J. Wagner

2 Q. Showing you what has been marked as HG  
3 18. It is an e-mail exchange on May 21, 2014  
4 Creative IT 01428-29.

5 A. Okay.

6 Q. It is an e-mail thread; right? One is  
7 dated the 21st and one is dated the 19th; correct?

8 A. Correct.

9 Q. On the 19th Josh Gill wrote to you,  
10 Mia, David and Steve Lupinski.

11 Do you see that?

12 A. I do.

13 Q. Who is Steve Lupinski?

14 A. I don't know who Steve Lupinski is.

15 Q. It says "David and I spoke about your  
16 preferences and needs for a flexible server  
17 solution."

18 Do you see that?

19 A. I do.

20 Q. And it says hosted server 25 users.

21 A. Okay.

22 Q. 2.5 terabytes of storage.

23 A. Okay.

24 Q. That's a lot of storage, do you agree?

25 A. That's a general statement. Graphics



1 J. Wagner

2 and everything that happens in computers just  
3 keeps taking more and more storage. You can get  
4 huge amounts of terabytes of storage now.

5 Q. As of May 21, 2014 what data did  
6 HudsonGray have?

7 A. I think that was more in terms of  
8 being able to do the graphic design work and the  
9 things the company anticipated. In other words,  
10 you don't buy a storer, a server and anticipate it  
11 is going to remain empty.

12 Q. So from your answer I take it that as  
13 of that moment you didn't have the data, you were  
14 just anticipating generating the data in the  
15 ordinary course of business; correct?

16 A. Correct. Video files and graphics and  
17 the type of work that we do.

18 MR. O'CONNOR: Please mark this as HG  
19 Exhibit 19.

20 (HG Exhibit 19, a May 13, 2014  
21 hosted file server proposal Bates stamped  
22 Creative IT 01430 through 1449, marked for  
23 identification, as of this date.)

24 Q. I am showing you what has been marked  
25 as HG 19. It is a May 13, 2014 hosted file server

1 J. Wagner

2 proposal.

3 A. Okay.

4 Q. Creative IT 01430 through 1449.

5 A. Okay.

6 Q. Is this the proposal you received on  
7 or about that date from IT Savvy?

8 A. I don't recall offhand if this went to  
9 us or to David Tuma. I don't remember this  
10 document verbatim looking at it but it is a  
11 proposal to HudsonGray.

12 Q. If you look at the e-mail we just  
13 looked at said I am attaching a proposal.

14 A. Okay.

15 Q. And then you have this proposal.

16 Do you have any reason to doubt this  
17 is the proposal he is referring to in HG 19? HG  
18 18, I am sorry.

19 Do you have any reason to doubt the  
20 proposal HG 19 is not what is referenced in HG 18?

21 A. Well, the date says Monday May 19th  
22 and the proposal is dated May 13th. I assume that  
23 it could have come with this e-mail.

24 MR. O'CONNOR: Please mark this next  
25 document as HG Exhibit 20.

1 J. Wagner

2 (HG Exhibit 20, a May 21, 2014  
3 e-mail, marked for identification, as of  
4 this date.)

5 Q. I am showing you what has been marked  
6 HG 20.

7 A. Okay.

8 Q. And it is the May 21, 2014 e-mail I  
9 think you told me about before.

10 A. That's correct.

11 Q. This is the one you prepared with?

12 A. This is the one we talked about in the  
13 beginning, yeah.

14 Q. And it is Bates stamped Creative IT  
15 01452; correct?

16 A. Correct.

17 Q. When you were preparing did you recall  
18 that you actually received this e-mail?

19 A. No, I didn't recall.

20 Q. As you sit here now, do you remember  
21 receiving the e-mail?

22 A. Again, I don't recall it but I am  
23 looking at it now. I mean I reviewed it, yeah. I  
24 just got this a couple of days ago.

25 Q. Do you need more time to review?

1 J. Wagner

2 A. No, no. This is good.

3 Q. Attached to this is the metadata for  
4 the document; okay.

5 A. Okay.

6 Q. As you can see it was blind copied to  
7 someone by the name of Adam Owens at Creative IT.

8 A. Okay.

9 Q. Do you know who that is?

10 A. I believe that's David's assistant,  
11 David Tuma's assistant.

12 Q. When was the last time you spoke to  
13 him?

14 A. It's been years. I don't think I have  
15 seen Adam since he was working at XA.

16 Q. So this is an 11:01 p.m. e-mail from  
17 David Tuma to you; correct?

18 A. Okay.

19 Q. And he goes on and talks about the  
20 things that you talked about; right?

21 A. Okay.

22 Q. He says "HG items."

23 That's a reference to HudsonGray;  
24 right?

25 A. That's correct.

1 J. Wagner

2 Q. "Get public folder for HG setup with  
3 calendar for all users."

4 Right?

5 A. Okay.

6 Q. "Set up new HG e-mails" and he goes on  
7 and lists four employees; right?

8 A. Yes.

9 Q. Including Mr. Andereck; correct?  
10 MR. MATTHEWS: Objection.

11 Go ahead.

12 A. Correct.

13 Q. And Mr. Day; right?

14 A. And Mr. Day, correct.

15 Q. He says "Working on above items now.  
16 Note, I had to purchase the mailbox licenses now  
17 and it takes a few hours before I can create the  
18 mailboxes."

19 Right?

20 A. Yes, that's correct.

21 Q. And then he says "XA e-mail (at  
22 Windstream)."

23 Right?

24 A. That's correct.

25 Q. So here is Mr. Tuma talking to you

1 J. Wagner

2 about XA's e-mails; right?

3 A. That's correct.

4 Q. And then he says "Delete mailboxes  
5 over weekend Mia, Joe, Mike, Jeff, Darren and  
6 Natalia."

7 Right?

8 A. Correct.

9 Q. And those are all references to XA  
10 employees; right?

11 A. That's correct.

12 Q. So you knew as of that moment Tuma was  
13 telling you he was going to be deleting mailboxes  
14 over the weekend; correct?

15 A. That's correct.

16 Q. "Current New York server."

17 Do you see that?

18 A. I do.

19 Q. That's a reference to XA server;  
20 correct?

21 A. That's reference to XA server New  
22 York, correct.

23 Q. You are not there anymore as of this  
24 day; right?

25 A. That's correct.

1 J. Wagner

2 Q. You have been gone for six weeks;  
3 right?

4 A. That's correct.

5 Q. You don't claim that you had any legal  
6 or proprietary right to anything on XA's servers,  
7 do you?

8 A. That's correct.

9 Q. "Copy/download from it meaning New  
10 York XA server."

11 Right?

12 A. Correct.

13 Q. "The projects production data to my  
14 server."

15 Right?

16 A. Correct.

17 Q. So you knew as of that night he was  
18 going to be copying projects production data from  
19 XA server to his server; correct?

20 A. Okay. That's what the e-mail says,  
21 yes.

22 Q. And then it says "Once copied delete  
23 from the server."

24 Right?

25 A. That's correct.

1 J. Wagner

2 Q. So you knew that his plan was that  
3 once he copied the projects production data to his  
4 server he would then delete it from the New York  
5 server; correct?

6 A. That's what it says, yes.

7 Q. It says "The above will happen over  
8 the weekend."

9 Right?

10 A. Correct.

11 Q. Then it says "Chicago server."

12 That's a reference to XA's Chicago  
13 server; right?

14 A. That's correct.

15 Q. Again, something you had no right to  
16 proprietary wise; is that right?

17 A. That's right.

18 Q. "Copy data to New York server. Agency  
19 projects, resources, media, exact copy of data at  
20 point in time when done. This will be done over  
21 the weekend."

22 Right?

23 A. Correct.

24 Q. And you knew that was his plan;  
25 correct?



1 J. Wagner

2 A. That's what he put forward in the  
3 e-mail.

4 Q. Chicago accounting data.  
5 Do you see that?

6 A. I do.

7 Q. Mr. Tuma told you quote "On date of  
8 Jean's exit Jean will make a copy to her raid  
9 device. I will make a second copy to my server,  
10 then delete from the Chicago server."

11 Do you see that?

12 A. I do.

13 Q. And that's what Tuma told you he was  
14 planning to do; correct?

15 A. That's what's put forth in the e-mail.

16 Q. Did you write to Tuma and say are you  
17 out of your mind?

18 A. I had a conversation with David Tuma  
19 about this and we went through that.

20 Q. When was this conversation?

21 A. Yesterday.

22 Q. My question is: When you received  
23 this e-mail from David Tuma in May of 2014, did  
24 you write to him and say are you out of your mind?

25 A. I didn't write to David and say are

1 J. Wagner

2 you out of your mind.

3 Q. What did you say to him?

4 A. I don't recall the exact conversation.  
5 I was very focused on HudsonGray at the time. I  
6 know that I spoke with David and worked with him  
7 for ten years. He feels like he copied me on this  
8 just out of habit, but there is very specific  
9 items to go down through on each of these.

10 Q. Sir, I don't have an open question.

11 I just asked you if you called him or  
12 e-mailed him.

13 A. I probably did e-mail him.

14 MR. MATTHEWS: Wait a second.

15 MR. O'CONNOR: I don't have an open  
16 question.

17 MR. MATTHEWS: The question is did you  
18 write to David Tuma are you out of your  
19 mind?

20 THE WITNESS: No, I didn't.

21 BY MR. O'CONNOR:

22 Q. So you knew he was going to do these  
23 things; correct?

24 A. It was what was purported in the  
25 e-mail.

1 J. Wagner

2 Q. Did you ever discuss with Jean Wilson  
3 either directly or indirectly her having a raid  
4 device?

5 A. I did not discuss a raid device with  
6 Jean Wilson.

7 Q. Were you ever present when a raid  
8 device was discussed?

9 A. Not a raid device. I am not really  
10 even sure what that is.

11 Q. You don't know what it is?

12 A. A raid device?

13 Q. Yes.

14 You have no knowledge of what a raid  
15 device --

16 A. I assume it is some sort of hard  
17 drive. I don't know.

18 Q. Did Darren Andereck have knowledge of  
19 this plan?

20 MR. MATTHEWS: Objection to form.

21 MR. O'CONNOR: I will withdraw it.

22 Q. To your knowledge, did Darren Andereck  
23 have knowledge of the contents of HG 20 in or  
24 about May of 2014?

25 A. I don't know that he did.

1 J. Wagner

2 Q. To your knowledge, did Jean Wilson  
3 have knowledge of this plan course of action  
4 outlined in HG 20 in or about May of 2014?

5 A. According to David Tuma her personal  
6 QuickBooks files were on that accounting data and  
7 that is what he was referring to. So I assume  
8 Jean Wilson was aware of this because she had her  
9 personal QuickBooks files on the Chicago server  
10 and David was making reference to getting her  
11 personal files removed from the accounting drive.

12 Q. Did you know if Jean Wilson disclosed  
13 to XA the plan outlined in HG 20 at any time?

14 A. I don't know that.

15 MR. MATTHEWS: Objection.

16 MR. O'CONNOR: Please mark this as HG  
17 Exhibit 21.

18 (HG Exhibit 21, a May 22, 2014  
19 e-mail Bates stamped Creative IT 01455,  
20 marked for identification, as of this date.)

21 Q. I show you what has been marked as HG  
22 21 which for the record is a May 22, 2014 e-mail  
23 Bates stamped Creative IT 01455.

24 A. Okay.

25 Q. So this is the morning after the

1 J. Wagner

2 e-mail that we just looked at; right?

3 A. Correct.

4 Q. David Tuma reported back to you at  
5 9:35 a.m. So he said "I started some of that work  
6 we discussed yesterday."

7 Right?

8 A. Correct.

9 Q. So the e-mail HG 20 was a summary of  
10 the things you talked about on the phone; correct?

11 MR. MATTHEWS: Objection.

12 A. He references a conversation, correct.

13 Q. And you had a conversation; correct?

14 A. As far as I know, yes.

15 Q. He says "HG e-mail the requested  
16 mailboxes are created. Waiting on public folders  
17 with GoDaddy support. I will probably get to call  
18 them later this afternoon and/or tomorrow  
19 afternoon."

20 "New York server. I set up my office  
21 to New York office hardware based VPN connection  
22 and started copying the projects production data."  
23 I will stop there for a second.

24 He is talking about XA's data; right?

25 A. That's correct.

1 J. Wagner

2 Q. And you knew as of that date he was  
3 copying XA's data; correct?

4 A. Per the e-mail I assume that's XA's  
5 data, yes.

6 Q. Then it says "I have the past projects  
7 and projects 2013 copied. Waiting on projects  
8 2014 to do tonight."

9 Do you see that?

10 A. I do.

11 Q. Quote "Let me know when it is okay to  
12 delete those from the New York server. (I think  
13 were waiting on Jesse and or other users to make  
14 copies of some of those project folders to their  
15 local laptop computers)."

16 Do you see that?

17 A. I do.

18 Q. Let's break that down.

19 You knew that Jessie Lomma was copying  
20 project records to her personal laptop computer;  
21 correct?

22 A. In the context of what was happening  
23 in the servers, the synchronization between  
24 Chicago and New York. This was a project that was  
25 started because there was significant issues in

1 J. Wagner

2 synchronizing with the data server in New York  
3 with the data server in Chicago.

4 So David Tuma was going forward with  
5 the process to delete all the data on the New York  
6 server and copy the XA data back to the New York  
7 XA server so there would be two mirrors instead of  
8 trying to synchronize between the servers which  
9 was an ongoing problem going back all the way  
10 before I had left XA.

11 Q. So you are not even part of XA  
12 anymore, are you?

13 A. In this time frame, no.

14 Q. You don't have a position with them?

15 A. I do not.

16 Q. You resigned?

17 A. That's correct.

18 Q. You've already formed a competitor?

19 A. That's correct.

20 Q. You are gathering new employees and  
21 you are telling me the reason he copied you is  
22 because he wanted you to know all the good things  
23 he is doing for XA?

24 A. No. I don't know why David copied me.  
25 I don't recall why this e-mail was put forward.

1 J. Wagner

2 Q. The next paragraph says quote "Chicago  
3 server data copied to New York server."

4 A. Correct.

5 Q. "Agency projects, resources, media  
6 started that process."

7 A. Correct.

8 Q. He says it will take five to six days  
9 to complete; right?

10 A. Okay.

11 Q. Then he goes on to say "I found a  
12 solution that lets the process run day and night."  
13 Right?

14 A. Okay.

15 MR. O'CONNOR: Please mark this as HG  
16 Exhibit 22.

17 (HG Exhibit 22, an e-mail Bates  
18 stamped Creative IT 01456 through 01458,  
19 marked for identification, as of this date.)

20 Q. Before we look at HG 22 and I will put  
21 on the record what it is, but a few minutes ago  
22 you said as of the date of the e-mails HG had no  
23 data of its own; correct? Do you remember that?

24 A. Starting in April, May time frame it  
25 wasn't a company that had a lot of data at that



1 J. Wagner

2 point.

3 Q. You said it didn't have any data.

4 Do you remember saying that?

5 A. When we were starting the company of  
6 course there was no data. When it was a startup  
7 company there was random computers, of course.

8 Q. When did Darren Andereck start at  
9 HudsonGray?

10 A. I don't recall the exact date.

11 Q. Wasn't it the day after this e-mail HG  
12 22?

13 A. That sounds about right.

14 Q. Jessie Lomma hadn't joined you yet;  
15 right?

16 A. That's correct.

17 Q. And then you told me Mia wasn't an  
18 employee; right?

19 A. Mia was assisting me, yeah.

20 Q. And assist you.

21 You are not generating data, are you?

22 A. Not tons of data, no.

23 Q. So there is no one else there to  
24 generate data as of May 22nd; right?

25 A. That's a fair statement.

1 J. Wagner

2 Q. Now let's look at HG 22 Creative IT  
3 01456 through 01458.

4 A. Okay.

5 Q. Is this an e-mail you received on or  
6 about May 22, 2014?

7 A. Again, I don't recall the e-mail  
8 specifically but yes I am looking at it now.

9 Q. It says "We have eight new PCs coming  
10 in."

11 Right?

12 A. Correct.

13 Q. "We have four new Macs coming in."

14 A. Correct.

15 Q. It says "Give all computers/users  
16 access to the hosted file server solution."

17 Right?

18 A. Okay.

19 Q. And he says at the bottom of that,  
20 actually it is in the middle, quote "I will have  
21 data to upload on the hosted server's shared  
22 folders already. So I need access from my home  
23 office to upload the data."

24 Correct?

25 A. Correct.

1 J. Wagner

2 Q. So you knew on May 22, 2014 Mr. Tuma  
3 was telling IT Savvy that he already had data from  
4 his server that he was going to transfer to  
5 HudsonGray's server; correct?

6 A. Correct.

7 MR. O'CONNOR: Please mark this as HG  
8 Exhibit 23.

9 (HG Exhibit 23, a document Bates  
10 stamped Creative IT 01459, marked for  
11 identification, as of this date.)

12 Q. I am showing you HG 23.

13 This is the day after Mr. Andereck had  
14 resigned from XA; right?

15 A. Okay.

16 Q. Do you know if he gave any notice to  
17 XA or did he just up and leave?

18 MR. MATTHEWS: Objection.

19 A. I believe he gave notice.

20 Q. How much time?

21 A. I am sorry?

22 Q. How much time, do you remember?

23 A. I don't recall.

24 Q. Did he actually show up or did he just

25 --

1 J. Wagner

2 A. When you say show up you mean?

3 Q. Did he stay around for two weeks to  
4 help transition the files?

5 A. I don't recall the format. I just  
6 know that I believe Darren did resign.

7 Q. So the next day Saturday he didn't  
8 magically create any new data for you; right, for  
9 HudsonGray?

10 A. That's correct.

11 Q. It says in HG 23 which is Creative IT  
12 01459?

13 A. Okay.

14 Q. David Tuma wrote to you seeking input  
15 and he wrote "Hi Joe, please let me know if it is  
16 okay to wipe the New York projects production  
17 data. I have two copies of it in my office  
18 already."

19 Is that what he wrote to you?

20 A. That's correct.

21 Q. And you knew he was talking about XA  
22 data; correct?

23 A. I do not.

24 Q. No?

25 Well, we know HudsonGray didn't have

1 J. Wagner

2 any data; right?

3 A. That's correct.

4 Q. So who else's data are we talking  
5 about here?

6 A. I am not sure what he is referencing  
7 there.

8 I need to use the restroom.

9 MR. O'CONNOR: Sure.

10 (Recess taken.)

11 (Luncheon recess: 12:10 p.m.)

12

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1 J. Wagner

2 A F T E R N O O N S E S S I O N.

3 (12:40 p.m.)

4 J O S E P H W A G N E R,

5 having been previously sworn, resumed the  
6 stand and testified further as follows:

7

8 MR. O'CONNOR: Please mark as HG  
9 Exhibit 24 an e-mail dated July 8, 2014  
10 HudsonGray server presentation.

11 (HG Exhibit 24, an e-mail dated July  
12 8, 2014 HudsonGray server presentation,  
13 marked for identification, as of this date.)

14 (Record read.)

15 EXAMINATION (Cont'd)

16 BY MR. O'CONNOR:

17 Q. I am putting in front of you HG 24  
18 which is a July 8, 2014 e-mail.

19 Have you ever seen this e-mail before?

20 A. I don't recall specifically, but I am  
21 reviewing it now.

22 Q. Okay?

23 A. Okay.

24 Q. Is this a HudsonGray data server  
25 e-mail and presentation given to you by David

1 J. Wagner

2 Tuma?

3 A. That is what it appears to be, yes.

4 Q. And the intension is that you would  
5 distribute the attached which is Creative IT 1524  
6 to your employees; correct?

7 A. Correct.

8 Q. And did you in fact distribute this to  
9 your employees?

10 A. I assume it was.

11 Q. Because it looked in order; correct?

12 A. Correct.

13 Q. And if you look on the second page Mr.  
14 Tuma is indicating that you have 1.7 terabytes of  
15 data on your hard drives; correct? Second page.

16 A. Where is this?

17 Q. Second page.

18 Do you see where it has the network  
19 locations?

20 MR. MATTHEWS: Where?

21 A. You mean in the graphic?

22 Q. Yes, sir.

23 It says 934 gigabytes are free of 2.70  
24 terabytes; correct?

25 A. I am not sure if this graphic is

1 J. Wagner

2 generic or if it's HudsonGray specific.

3 Q. Take a look at it.

4 A. I am trying to read it.

5 Q. You see it says David Tuma and he has  
6 the four network locations; right?

7 A. Okay.

8 Q. And the e-mail is telling you he is  
9 describing how your network is configured; right?

10 A. Okay.

11 MR. O'CONNOR: Please mark this as HG  
12 Exhibit 25.

13 (HG Exhibit 25, a June 30, 2014  
14 Creative IT invoice Bates stamped Creative  
15 IT 24, marked for identification, as of this  
16 date.)

17 Q. Showing you what has been marked as HG  
18 25 which is Bates stamped Creative IT 24.

19 A. Okay.

20 Q. This is a June 30, 2014 Creative IT  
21 invoice to your company; correct?

22 A. Correct.

23 Q. Was this received by you on or about  
24 that date?

25 A. I assume that it was.



1 J. Wagner

2 Q. And this is for services performed in  
3 June of 2014.

4 Do you see that?

5 A. That's what it looks to be, yes.

6 Q. Do you have some explanation for me as  
7 to why this was not in your production?

8 A. I don't know.

9 Q. Where would this document have been  
10 stored at your company?

11 A. Going back to this point in time kind  
12 of the startup nature of the company I don't know  
13 whether this would have been hard copies or where  
14 we would have kept vendor files at that point.

15 Q. By the way, was Mia ever physically  
16 present in New York to help set up HudsonGray?

17 A. I don't recall. I am not sure if she  
18 was.

19 Q. Now this is provided by Creative IT  
20 Consulting and it is dated June 30. I have never  
21 seen an invoice from Creative IT for anything they  
22 did previously for HudsonGray.

23 Do you have some explanation for why  
24 that might be the case?

25 A. I don't know what the -- I don't

1 J. Wagner

2 recall what the situation was when David was  
3 setting this up. I know that some of the things  
4 were done on a cash basis. I don't know.

5 Q. Are you testifying under oath that you  
6 gave cash to this man for IT services?

7 A. I am not saying that I gave cash to  
8 David Tuma. I said checks. Before we had offices  
9 set up where we had the accounting systems going  
10 at the beginning.

11 RQ MR. O'CONNOR: Well, I would ask that  
12 you provide us with any checks for any  
13 services that were rendered before June  
14 2014.

15 MR. MATTHEWS: We will take the  
16 request under advisement.

17 MR. O'CONNOR: They should have been  
18 produced a long time ago.

19 MR. MATTHEWS: What request are they  
20 responsive to?

21 MR. O'CONNOR: I'm not going to drag  
22 -- your client wants to get on a flight.  
23 You can take it up with --

24 MR. MATTHEWS: My client was available  
25 at 9:30 to start this deposition.

1 J. Wagner

2 MR. O'CONNOR: You can take it up with  
3 the court.

4 MR. MATTHEWS: You can take it up with  
5 the court.

6 MR. O'CONNOR: Listen, I will stay  
7 here till five o'clock if you'd like. Keep  
8 it up.

9 MR. MATTHEWS: I'm ready.

10 BY MR. O'CONNOR:

11 Q. Sir, do you know of any invoice from  
12 David Tuma to HudsonGray in April of 2014?

13 A. I don't recall that, no.

14 Q. And do you know of any invoice in May  
15 of 2014 from David Tuma?

16 A. I don't recall it offhand, no.

17 Q. So the only one paying for David  
18 Tuma's time in May or April is XA; correct, as far  
19 as you know?

20 A. I don't know that.

21 Q. Well, you don't remember if you made  
22 any payments to him prior to this; correct?

23 A. That's correct.

24 MR. O'CONNOR: Please mark this as HG  
25 Exhibit 26.

1 J. Wagner

2 (HG Exhibit 26, a July 31, 2014  
3 invoice from Creative IT Consulting to  
4 Joseph Wagner at HudsonGray, marked for  
5 identification, as of this date.)

6 Q. I would like to show you what has been  
7 marked as HG 26.

8 Have you seen this before?

9 A. I don't recall, but I am reviewing it  
10 now.

11 Q. For the record, this is a July 31,  
12 2014 invoice from Creative IT Consulting to Joseph  
13 Wagner at HudsonGray.

14 A. Okay.

15 Q. Does it look familiar?

16 A. Again, I am reviewing it now.

17 MR. MATTHEWS: The question is does it  
18 look familiar?

19 THE WITNESS: Yes. I said I am  
20 reviewing it now.

21 Q. Does it look familiar to you?

22 A. I assume it is something that was  
23 provided to the company. I don't recall this  
24 invoice from memory.

25 Q. He states that nothing had been paid

1 J. Wagner

2 to him as of that date.

3 Do you see that? Look at the box.

4 A. A balance due of twenty-six hundred  
5 dollars and change.

6 Q. And it says payments and credits  
7 between June 30 and July 31 zero?

8 A. That's correct.

9 MR. O'CONNOR: Please mark this as HG  
10 Exhibit 27.

11 (HG Exhibit 27, a September 30, 2014  
12 invoice from Creative IT Consulting, marked  
13 for identification, as of this date.)

14 Q. Now before I get to HG 27, what was  
15 the date that Jean Wilson resigned from XA?

16 A. I don't recall exactly. I think it  
17 was sometime in September.

18 Q. Was it a Friday in mid September?

19 A. I don't know the exact date but it was  
20 sometime in September.

21 Q. Let's see if this refreshes your  
22 recollection. HG 27 September 30, 2014 invoice  
23 from Creative IT Consulting to you; right?

24 A. Okay.

25 Q. It is marked Creative IT 31.

1 J. Wagner

2 Did you receive this invoice?

3 A. I am sure that I did.

4 Q. In fact, you paid part of that  
5 invoice; correct?

6 A. It shows a payment recorded, yes.

7 Q. I mean after you received the invoice  
8 you made a future payment, a subsequent payment on  
9 that; correct, do you remember?

10 A. It shows a payment credit of four  
11 hundred.

12 Q. I understand that.  
13 That's reflecting a payment you made  
14 before the invoice was issued; right?

15 A. Correct.

16 Q. And then after you received this  
17 invoice, you paid on the invoice; correct?

18 A. I assume that I made payment on this  
19 invoice.

20 Q. You didn't see anything wrong with the  
21 invoice, did you?

22 A. No, I did not.

23 Q. In fact, HudsonGray was billed for  
24 work on September 12, 2014 described as Jean PST  
25 file download open Jean's PST file and Outlook.

1 J. Wagner

2 Do you see that?

3 A. That's correct.

4 Q. And HudsonGray was billed for time on  
5 the 17th and time on the 23rd and time on the  
6 24th; correct?

7 A. Correct.

8 Q. And on September 24th HudsonGray paid  
9 for the following services Jean resolved phone  
10 e-mail issue. Import Outlook PST file into HG  
11 exchange account.

12 Do you see that?

13 A. I do.

14 Q. So you paid to have her Outlook folder  
15 imported into HG's exchange account; correct?

16 A. That's correct.

17 MR. O'CONNOR: Please mark this as HG  
18 Exhibit 28.

19 (HG Exhibit 28, an October 31, 2014  
20 invoice Bates stamped Creative IT 30, marked  
21 for identification, as of this date.)

22 Q. Do you know if Jean Wilson told  
23 anybody at XA that she was taking her PST folder  
24 with her?

25 MR. MATTHEWS: Objection.

1 J. Wagner

2 Q. Do you know?

3 A. I don't know.

4 Q. HG 28 Creative IT 30. October 31,  
5 2014 invoice.

6 Do you see that?

7 A. I do.

8 Q. Is this an invoice that you received?

9 A. I assume that it is.

10 Q. And you can see that you made a five  
11 hundred dollar payment on the invoice we just  
12 looked at; is that correct?

13 A. That's correct.

14 Q. It says "October 8th phone meeting  
15 with Jean to review items."

16 Do you see that?

17 A. I do.

18 Q. As of October 8th, what was Jean  
19 Wilson's role in HudsonGray?

20 A. I don't believe she had a specific  
21 title at the time. Operations.

22 Q. She had a title operations?

23 A. I didn't say she had a title. I said  
24 she was doing operations. I said I don't believe  
25 she had a specific title at the time.



1 J. Wagner

2 Q. When did she get a title?

3 A. To the best of my recollection, Jean  
4 worked as an independent contractor for a period  
5 of time for HudsonGray and then eventually became  
6 a full time employee.

7 Q. Did you recommend to her that she  
8 apply for unemployment?

9 A. I don't recall doing that.

10 Q. Were you aware that she applied for  
11 unemployment telling them she was not working?

12 A. I know that Jean had an employment  
13 hearing or had some issues. We had talked about  
14 that.

15 Q. You helped her through that?

16 A. I don't know if I helped her through  
17 that. I know that she made me aware that she was  
18 going through an employee, employment hearing.

19 Q. My question was about unemployment  
20 insurance.

21 Were you aware that she made a claim  
22 to XA to receive unemployment insurance at the  
23 time you were working with her as an independent  
24 contractor?

25 MR. MATTHEWS: Objection.

1 J. Wagner

2 Go ahead.

3 A. I was aware that she had an employment  
4 hearing at some point, yes.

5 Q. Were you aware that she showed up for  
6 a hearing with an administrative law judge and had  
7 with her confidential information from XA servers?

8 MR. MATTHEWS: Objection.

9 Go ahead.

10 A. No, I wasn't aware of that.

11 Q. Never saw the decision by the  
12 administrative law judge?

13 A. I did not read a decision from the  
14 administrative law judge.

15 Q. The payments that HudsonGray made to  
16 Jean Wilson after she resigned from XA were all  
17 made through Mixed Company; correct?

18 A. To the best of my recollection, there  
19 were payments made to Mixed Company.

20 Q. And you authorized those; right?

21 A. Correct.

22 Q. Were there any payments made to Mixed  
23 Company in calendar year 2014 that were for any  
24 services other than what Jean Wilson was  
25 performing in the role that you just described?

1 J. Wagner

2 A. I am not sure. I know that there was  
3 some creative services work that company did on  
4 behalf of HudsonGray. Darren can probably speak  
5 to that more on the operations and the production  
6 side.

7 Q. If you had documentation of that you  
8 would have produced it; right?

9 A. That's correct.

10 MR. MATTHEWS: Objection, but go  
11 ahead.

12 MR. O'CONNOR: Please mark this as HG  
13 Exhibit 29.

14 (HG Exhibit 29, a July 21, 2014  
15 e-mail exchange Bates stamped Creative IT  
16 1528 through 1532, marked for  
17 identification, as of this date.)

18 Q. Mr. Wagner, I am showing you what has  
19 been marked as HG 29 which is a July 21, 2014  
20 e-mail exchange and it is Bates stamped Creative  
21 IT 1528 through 1532.

22 Have you ever seen this before?

23 A. Yes, I have.

24 Q. Is this an e-mail you received on or  
25 about that date?

1 J. Wagner

2 A. I assume that it is.

3 Q. Again, it is copied to Jean Wilson;  
4 correct?

5 A. This is the Right Network shared  
6 platform again. It has the shared QuickBooks file  
7 and the shared accountant which is David Rice.

8 MR. O'CONNOR: Please mark this as HG  
9 Exhibit 30.

10 (HG Exhibit 30, a document Bates  
11 stamped Defendant 150711, marked for  
12 identification, as of this date.)

13 A. Okay.

14 Q. This is Defendant 150711?

15 A. That's correct.

16 Q. Have you ever seen this e-mail before?

17 A. I don't recall it, but I am reviewing  
18 it now.

19 Q. For the record, the e-mail is dated  
20 December 7, 2014.

21 Have you looked at it?

22 A. I have.

23 Q. Is this an e-mail you received on or  
24 about December 7, 2014?

25 A. It is.

1 J. Wagner

2 Q. Now the HG underscore accounting  
3 e-mail address, that's an e-mail address assigned  
4 to Jean Wilson; correct?

5 A. No. That was an e-mail address that  
6 was a catchall. It was entitled accounting and  
7 there were a number of individuals that would use  
8 that account depending on what needed to happen to  
9 send invoices that were past due or to handle  
10 accounting. So it was what's considered a  
11 catchall e-mail under accounting. It wasn't  
12 titled to a specific individual. Jean did use it.  
13 I believe Mia used it at the beginning.

14 So there was a number of folks who  
15 used that e-mail.

16 Q. Who else?

17 A. I don't recall offhand but it was  
18 available to be anything that was accounting based  
19 because we were still kind of going through that  
20 startup mode.

21 Q. In any event, on December 5, 2014 you  
22 wrote an e-mail to that address and you said  
23 "Jean, sorry about the phone tag."

24 Is that correct?

25 A. That's correct.

1 J. Wagner

2 Q. Then you said quote "I would like to  
3 see all the e-mails that you have to and from Ron  
4 B. It may be easier for you to just make a PST  
5 that I can go through."

6 Do you see that?

7 A. I do.

8 Q. You are talking about e-mails from XA;  
9 correct?

10 A. I assume those are XA e-mails  
11 referenced there, yes.

12 Q. So you knew at that date she had XA  
13 e-mails; correct?

14 A. That's correct.

15 Q. You also said "Please send me the  
16 balance sheet and P&L for Studio AG."

17 Correct?

18 A. Right.

19 Q. For how many years?

20 A. It goes 2010 through 2014  
21 year-to-date.

22 Q. So why in the world would Jean Wilson  
23 have possession of balance sheets and P&Ls for  
24 Studio AG?

25 A. I assume because she had access to the

1 J. Wagner

2 accounting file for Studio AG.

3 Q. Where was the accounting file?

4 A. Again, in the hosted drive, the Right  
5 Networks drive.

6 Q. So you had access, that drive was  
7 available through HudsonGray; right?

8 A. That networks drive was available to  
9 the different companies that were using David Rice  
10 as an accountant. So each company stored their  
11 QuickBooks file on the Right Networks system.

12 Q. She says "I have interviewed four tax  
13 consultants."

14 Do you see that?

15 A. I do.

16 Q. What is she talking about?

17 A. I assume that goes to the New York  
18 sales tax that was being set up for HudsonGray.

19 MR. O'CONNOR: Please mark this as  
20 HudsonGray Exhibit 31.

21 (HG Exhibit 31, a December 15, 2014  
22 e-mail entitled General Ledger and Trial  
23 Balance, marked for identification, as of  
24 this date.)

25 Q. I would like to show you what has been

1 J. Wagner

2 marked as HudsonGray 31 which is a December 15,  
3 2014 e-mail entitled General Ledger and Trial  
4 Balance.

5 Do you see that?

6 A. I do.

7 Q. Now on December 15, 2014 Jean Wilson  
8 forwarded to you the XA general ledger and trial  
9 balance; correct?

10 A. She sent me an e-mail that referenced  
11 that in a title. I don't believe she sent me the  
12 actual document. It seems to be an e-mail trail  
13 that is titled under general ledger and trial  
14 balance.

15 Q. Can we agree that this is from your  
16 production? Do you see that?

17 A. Correct.

18 Q. This was in your possession; correct?

19 A. Correct.

20 Q. And this is a communication between  
21 the COO of XA and its auditor; correct? Do you  
22 see on the bottom?

23 A. It's Diego Roca.

24 Q. Who is that?

25 A. I assume he is somebody working at XA.



1 J. Wagner

2 Q. Why would you be entitled as of  
3 December 15, 2014 to confidential information  
4 about XA?

5 MR. MATTHEWS: Objection.

6 A. I am not sure what the context was  
7 with this.

8 Q. Can you think of any legitimate reason  
9 why the now former COO of XA would be sending you  
10 confidential financial information about my client  
11 on that date?

12 MR. MATTHEWS: Objection.

13 Q. Can you think of any reason?

14 A. I assume it was related to the lawsuit  
15 in some way.

16 Q. But you had possession of this  
17 document; right?

18 A. When you say you, you mean HG  
19 defendants?

20 Q. Miss Wilson gave it to you; right?

21 A. I am not sure where the e-mail came  
22 from but yes, it is part of our production.

23 Q. And in fact, you thought it was  
24 confidential and you stamped it confidential, do  
25 you see that?

1 J. Wagner

2 A. It is stamped confidential.

3 MR. O'CONNOR: Please mark this as HG  
4 Exhibit 32.

5 (HG Exhibit 32, a document Bates  
6 stamped Defendant 95461 and 62, marked for  
7 identification, as of this date.)

8 Q. I am showing you what has been marked  
9 as HG 32 which is marked Defendant 95461 and 62.

10 A. Okay.

11 Q. Have you ever seen this document  
12 before?

13 A. I don't recall it. I am reviewing it  
14 now.

15 Okay.

16 Q. So here we have Miss Wilson, a former  
17 XA employee, on December 15, 2014 sending to you  
18 communication that she had with the auditor of XA  
19 when she was employed at XA; correct?

20 MR. MATTHEWS: Objection.

21 A. That's correct.

22 Q. And in fact, she attaches three Excel  
23 spreadsheets; right?

24 A. There are spreadsheets referenced in  
25 the attachment, yes.

1 J. Wagner

2 Q. Sir, tell me what legitimate factual  
3 basis would you have to possess any of this?

4 MR. MATTHEWS: Objection.

5 Go ahead.

6 A. Again, I am assuming this was around  
7 the lawsuit that had been filed.

8 Q. What does that mean?

9 A. I assume that she is referencing these  
10 for the information needed for the case.

11 Q. How did she get them?

12 A. I don't know.

13 Q. Did you say why are you sending this  
14 to me?

15 A. I did not.

16 Q. You in fact asked her for that;  
17 correct?

18 A. Again, to the best of my recollection,  
19 this revolves around the lawsuit that had been  
20 filed.

21 Q. But I have asked you what right did  
22 you have to the information and you keep saying it  
23 is because of the lawsuit. I don't understand  
24 what you mean.

25 Are you suggesting that because there

1 J. Wagner

2 was a lawsuit that you could get access to XA's  
3 data?

4 A. Again, I don't recall what the  
5 specifics were around how the data was generated  
6 but I am assuming that this is tied into the  
7 lawsuit that was filed and the items were being  
8 reviewed for that purpose.

9 Q. But you don't have any understanding  
10 about why Jean Wilson has this, do you or how she  
11 got it?

12 A. I assume it was part of her PST file.

13 Q. The one we looked at before that got  
14 taken when she was --

15 A. Obviously, out of her e-mails.

16 MR. O'CONNOR: Please mark this as HG  
17 Exhibit 33.

18 (HG Exhibit 33, a December 16, 2014  
19 e-mail chain Bates stamped Defendant 93919  
20 through 93920 also marked confidential,  
21 marked for identification, as of this date.)

22 Q. I am showing you what has been marked  
23 as HG 33.

24 A. Okay.

25 Q. Which is a December 16, 2014 e-mail

1 J. Wagner

2 chain marked Defendant 93919. It is also marked  
3 confidential.

4 A. Okay.

5 Q. It goes through 93920. This was  
6 produced by your office, by your attorney; okay?

7 A. Okay.

8 Q. It is marked confidential; right?

9 A. Okay.

10 Q. And if you look down there is a  
11 discussion December 12, 2014 between someone from  
12 HG accounting.

13 A. Okay.

14 Q. To Jessie Lomma, yourself and Darren  
15 Andereck.

16 Do you see that?

17 A. I do.

18 Q. If you look on the second page at the  
19 first e-mail in the chain it talks about an  
20 upfront template.

21 A. Okay.

22 Q. Where did the upfront template come  
23 from?

24 A. I don't know.

25 Q. Do you have some explanation for how

1 J. Wagner

2 HudsonGray obtained a upfront template?

3 A. I assume since it is coming from  
4 Jessie it is something she had produced.

5 Q. Let's look at this. It says from you  
6 to HG accounting and to Jessie Lomma and to  
7 Darren.

8 A. Okay.

9 Q. "Jean, as discussed I have attached  
10 the document with minor edits removing a few  
11 references to XA and deleting sections 7B and C."

12 Do you see that?

13 A. I do.

14 Q. So you took the draft upfront template  
15 and you deleted all the references to XA; correct?

16 A. It says remove references to XA, yes.

17 Q. And then what did Jessie Lomma say  
18 back to you? Can you please read that back to me?

19 A. "Am I the only one concerned about  
20 submitting the same contract as we did last year,  
21 with a new company name and logo? Feel free to  
22 let me know if I am overthinking it."

23 Q. And then somebody from HG accounting  
24 on December 12, 2014 wrote back "It has been  
25 stripped down to pull out anything that would

1 J. Wagner

2 prompt NBC legal to get involved, raise any  
3 concerns or slow down due to their review."

4 Do you see that?

5 A. I am sorry?

6 Q. First page. The bottom of the first  
7 page.

8 A. This is from HG accounting?

9 Q. Yes.

10 And that's Jean; right?

11 A. I assume this is Jean.

12 Q. Is it HudsonGray's position that it  
13 did not take that upfront template from XA's  
14 files?

15 A. I don't know if that's correct or not.

16 Q. So it might have come from XA's files?

17 A. That's a possibility.

18 Q. Did you tell anybody to take things  
19 from XA's files?

20 A. I did not.

21 MR. O'CONNOR: Please mark this as HG  
22 Exhibit 34.

23 (HG Exhibit 34, a document entitled  
24 NBC Primetime Preview 2014 Contact List,  
25 marked for identification, as of this date.)

1 J. Wagner

2 Q. Have you ever seen HG 34 before?

3 A. No, I don't believe I have.

4 Q. It is a document entitled NBC

5 Primetime Preview 2014 Contact List.

6 A. Okay.

7 Q. 18 pages; right?

8 A. Correct.

9 Q. Do you see at the bottom right-hand  
10 corner DEF 72661?

11 A. I do.

12 Q. And it goes through 72678?

13 A. Correct.

14 Q. And it is marked confidential;  
15 correct?

16 A. That's correct.

17 Q. And do you have some explanation for  
18 how this got into your files?

19 A. I do not.

20 Q. You agree it is confidential  
21 information; right? Didn't you mark it  
22 confidential?

23 A. I didn't personally mark it  
24 confidential.

25 Q. Do you agree with the designation



1 J. Wagner

2 confidential?

3 A. It is marked confidential.

4 Q. Do you agree it is confidential?

5 MR. MATTHEWS: Objection.

6 MR. O'CONNOR: He can answer.

7 MR. MATTHEWS: I will make a  
8 statement.

9 MR. O'CONNOR: Don't make a speaking  
10 objection. That would really be  
11 inappropriate.

12 MR. MATTHEWS: I object to the form of  
13 the question.

14 MR. O'CONNOR: I will withdraw the  
15 question.

16 BY MR. O'CONNOR:

17 Q. Do you agree that what's in this  
18 document is confidential? Take a look at it.

19 MR. MATTHEWS: Objection.

20 Go ahead.

21 A. It would seem to be a production list  
22 of people associated with doing the context for  
23 the NBC universal upfront.

24 Q. And it contains personal information;  
25 correct, phone numbers, e-mails?

1 J. Wagner

2 A. That's correct.

3 Q. It contains a who's who of who worked  
4 on the project; correct?

5 A. I would say yes, it encompasses the  
6 folks that were working on the project.

7 Q. Again, do you have any understanding  
8 of how this came into your possession?

9 A. I do not.

10 MR. O'CONNOR: Please mark this as HG  
11 Exhibit 35.

12 (HG Exhibit 35, a September 10, 2014  
13 e-mail from David Tuma to Joe Wagner with an  
14 attachment events log, marked for  
15 identification, as of this date.)

16 Q. HG 35 for the record is a September  
17 10, 2014 e-mail from David Tuma to Joe Wagner and  
18 it has an attachment events log and attached to it  
19 is the log and this was produced by Mr. Tuma.

20 A. Okay.

21 Q. Why are you receiving a log from Mr.  
22 Tuma about activities going on on XA servers?

23 A. I don't know.

24 Q. Did you write back to him and say why  
25 are you sending me this log?

1 J. Wagner

2 A. I don't recall if there was  
3 communication about this or not. I did speak with  
4 David yesterday about this to ask him if he has  
5 any recollection of why this was sent and he said  
6 he thought perhaps it was done in error. He  
7 doesn't have a recollection of why it was sent to  
8 me. I don't have any recollection of it seeing  
9 this or why it was sent. It wouldn't really mean  
10 anything to me.

11 Q. Did you happen to notice that the log  
12 correlates exactly to HG 27 where he lists all the  
13 things he did on XA server?

14 A. No, I did not corollate that.

15 Q. It is just a coincidence?

16 A. I am not saying it is. I am just  
17 saying I didn't notice that.

18 MR. O'CONNOR: Please mark this as HG  
19 Exhibit 36.

20 (HG Exhibit 36, a December 8, 2014  
21 e-mail Bates stamped Defendant 80305 through  
22 80307, marked for identification, as of this  
23 date.)

24 Q. Showing you what is HG 36, a December  
25 8, 2014 e-mail Defendant 80305 through 80307.

1 J. Wagner

2 A. Okay.

3 Q. If you look at the end it attaches a  
4 bunch of reports.

5 Do you see that?

6 A. I do.

7 Q. And it says in the subject line  
8 deliverables you ask about and if you look in the  
9 middle Jean Wilson had written on March 13, 2014  
10 and said "Here is the QB file that was sent to the  
11 auditor." And then she gave a password.

12 A. Okay.

13 Q. So this e-mail contains a QuickBook  
14 file for CMG; correct?

15 A. I don't know if this specific e-mail  
16 trail included the attachments.

17 Q. Well, I would know that if you guys  
18 had actually produced it the way it was given to  
19 you but it wasn't. So I am asking you.

20 A. I don't know if there was attachments  
21 to this e-mail or not.

22 MR. MATTHEWS: Objection.

23 Q. So you have been in the business for a  
24 long time; right? You have run businesses; right?

25 A. Okay.

1 J. Wagner

2 Q. You use e-mail a lot?

3 A. Yes.

4 Q. And when you get an e-mail that says  
5 attachments and then it has, it signifies that  
6 actual attachment; do you see that the first page?

7 A. Yes.

8 Q. And it says "XA-CMGO portable dot  
9 QBM."

10 That's a QuickBook file; correct?

11 A. I assume it is a QuickBook file.

12 Q. Why were you receiving a XA CMG  
13 QuickBook file on December 8, 2014?

14 A. Again, I am assuming it is something  
15 that had to do with the case that's filed.

16 Q. But there is no legitimate reason for  
17 you to receive this, is there?

18 MR. MATTHEWS: Objection.

19 Q. Can you think of one?

20 A. I can't answer that.

21 MR. O'CONNOR: Please mark this as HG  
22 Exhibit 37.

23 (HG Exhibit 37, a document Bates  
24 stamped Defendant 77850 also marked  
25 confidential by the defendant, marked for

1 J. Wagner

2 identification, as of this date.)

3 Q. Showing you HG 37 Bates stamped  
4 Defendant 77850 also marked confidential by the  
5 defendant.

6 A. Okay.

7 Q. Have you ever seen this before?

8 A. I don't recall ever seeing this, no.

9 Q. Do you have some explanation why this  
10 was in your files?

11 A. I am not familiar with the document.  
12 I don't know why it is in the file.

13 MR. O'CONNOR: Please mark this as HG  
14 Exhibit 38.

15 (HG Exhibit 38, an e-mail from  
16 September 17, 2014 Bates stamped Defendant  
17 76978, marked for identification, as of this  
18 date.)

19 Q. I have shown you HG 38 marked  
20 Defendant 76978 which is an e-mail from September  
21 17, 2014.

22 A. Okay.

23 Q. So this is not even a week after Jean  
24 Wilson resigned from XA; correct?

25 A. That's the correct time frame.

1 J. Wagner

2 Q. So is there some reason why you chose  
3 to copy Jean Wilson on an e-mail, but sent it to  
4 her home address or her personal address?

5 A. I don't recall why Jean was copied on  
6 here.

7 Q. But you did; right?

8 A. That's correct.

9 Q. And it says and this is Jessie Lomma  
10 to Joe Wagner on September 17th, "We have a long  
11 standing relationship with Civic as they are USA's  
12 outside PR company."

13 Do you see that?

14 A. I do.

15 Q. And that's a reference to XA having a  
16 long standing relationship; correct?

17 MR. MATTHEWS: Objection.

18 A. My interpretation it says the team  
19 like Jessie Lomma has a long standing relationship  
20 with Civic.

21 Q. Had you done any work with Civic at  
22 that time?

23 A. I don't know.

24 MR. O'CONNOR: Please mark this as HG  
25 Exhibit 39.

1 J. Wagner

2 (HG Exhibit 39, a document Bates  
3 stamped DEF 87910 through 87912, marked for  
4 identification, as of this date.)

5 Q. HG 39 looks like another version of  
6 this e-mail with you just telling her that you are  
7 going to do something.

8 Do you see that at the top?

9 A. Yes, I do.

10 Q. Again, you copied it to Jean at  
11 freckle farm home.com; right?

12 A. That's right.

13 MR. O'CONNOR: Please mark this as HG  
14 Exhibit 40.

15 (HG Exhibit 40, a document marked  
16 HudsonGray General Ledger as of December 31,  
17 2014 Bates stamped Defendant 39337 through  
18 39472 and marked confidential 2014, marked  
19 for identification, as of this date.)

20 Q. I am showing you what has been marked  
21 HG 40.

22 Is this a true and correct copy of the  
23 general ledger for HudsonGray during the first  
24 calendar year of its operations?

25 A. It is marked HudsonGray general ledger



1 J. Wagner

2 as of December 31, 2014. There is a huge number  
3 of pages. I assume it is a correct version. I  
4 don't know if you want me to go through each page.

5 Q. I got this from your lawyer.

6 A. Yes. I assume it is a correct copy of  
7 the general ledger.

8 Q. So the Bates range is Defendant 39337  
9 through 39472 and it is marked confidential. Let  
10 me ask you a few questions.

11 A. Okay.

12 Q. Did any other investors put money into  
13 HudsonGray at any time other than Brad Powers?

14 A. Not that I recall.

15 Q. Is there someone named Nate that you  
16 looked to for money?

17 A. Nate Bradley.

18 Q. Who is he?

19 A. He was the CEO of Audio Eye.

20 Q. Is he still the CEO of Audio Eye?

21 A. No. He is no longer with Audio Eye.

22 Q. Do you know why he is no longer with  
23 Audio Eye?

24 A. No.

25 Q. Never heard anything about that?

1 J. Wagner

2 A. No. I know that there was a gentleman  
3 by the name of Carr Betis that took over Audio Eye  
4 at one point. I think he was brought in by Nate  
5 and Nate at one point left the company. Nate was  
6 part of CMG at one point. He was another  
7 subsidiary coming out alongside of XA.

8 Q. Did Audio Eye ever advance any moneys  
9 to HudsonGray?

10 A. I think they did at the end of  
11 December. I think we had a loan from them. I  
12 don't recall exactly the nature of it.

13 Q. End of December what year?

14 A. 2014.

15 Q. How much did they lend?

16 A. I don't recall. We were very tight on  
17 cash flow. I can't remember if it was a loan or  
18 an advance or some kind of fund.

19 Q. Were they paid back?

20 A. I don't recall if we paid them back or  
21 we did services for them. I don't recall the  
22 nature of how it was done. I can go back and look  
23 at it but I don't recall what happened exactly  
24 with the moneys that I believe Nate put in toward  
25 the end of December 2014.

1 J. Wagner

2 Q. Is there some reason why the deposits  
3 don't appear in your general ledger?

4 A. I don't recall.

5 Q. You said you would have to go back and  
6 look.

7 What would you go back and look at?

8 A. I would go back and talk to the  
9 accountant and look at the QuickBooks file and see  
10 if there was anything.

11 Q. Who would that accountant be?

12 A. David Rice.

13 Q. Do you remember the amount of money  
14 that was lent from Audio Eye?

15 A. I don't recall much about it. I  
16 recall we were very tight on cash flow at the  
17 time. I know Darren was lending money to the  
18 company. We were very tight on cash flow. I had  
19 conversations with Nate I remember about it. I am  
20 not sure if there was actually any moneys put in  
21 or we just talked about. I don't recall. It was  
22 four and a half years ago.

23 Q. Your testimony is you don't remember  
24 if you got money from Audio Eye?

25 A. I don't remember if we borrowed money

1 J. Wagner

2 from Nate.

3 Q. From him personally or from his  
4 company?

5 A. I don't recall.

6 Q. Now you mentioned Darren Andereck  
7 loaned money to the company?

8 A. Correct.

9 Q. And that's reflected on the general  
10 ledger; right?

11 A. I am not sure it is. I assume it is.

12 Q. I can show you, but --

13 A. Okay.

14 Q. I am asking is there any documentation  
15 of those loans?

16 A. I don't believe we ever did notes or  
17 anything on them. Darren just lent the company  
18 money.

19 Q. Was he paid back?

20 A. As far as I know he was.

21 Q. Was he paid back with interest?

22 A. I don't recall.

23 Q. Is Darren Andereck promised an equity  
24 stake in the company?

25 A. No.

1 J. Wagner

2 Q. Verbal or otherwise?

3 A. No.

4 Q. Has Jean Wilson been promised an  
5 equity stake or holding in HudsonGray?

6 A. Not that I recall.

7 Q. Is any other person on the face of the  
8 earth been promised an equity stake in HudsonGray?

9 A. Brad Powers has warrants in the  
10 company.

11 Q. Other than Brad Powers?

12 A. Not that I recall.

13 Q. So on the general ledger it says on  
14 June 3rd that you paid out salaries.

15 Do you see that?

16 A. June 3rd paychecks.

17 Q. Yes. Looks like one says  
18 professionals, one says salaries and another says  
19 salaries.

20 Do you see those in June 2014?

21 A. There is a number of June 3rd entries.

22 Q. My question is: Who was receiving a  
23 salary at that time?

24 A. June 3rd of 2014 most likely in that  
25 pay period Jeff Smith.

1 J. Wagner

2 Q. Was Mia receiving any moneys from  
3 HudsonGray at any time?

4 A. I don't recall if we paid her or not  
5 at the time.

6 Q. Was Mia still employed by XA at that  
7 time?

8 A. I don't recall exactly when Mia left  
9 XA.

10 Q. Do you see on the second page you have  
11 a large American Express payment \$36,060.10?

12 A. I do see that.

13 Q. Is that Darren Andereck's American  
14 Express?

15 A. I believe that that is his personal  
16 Amex, yes.

17 Q. And that would have been for the  
18 period that would have been June; right?

19 A. I am not sure what the period was. I  
20 know there was a payment made at that time.

21 Q. So you paid on Darren Andereck's  
22 American Express July 3rd thirty-six thousand  
23 dollars?

24 A. Correct.

25 Q. Have you produced those statements?

1 J. Wagner

2 A. Yes. The statements have been  
3 produced numerous times. As far as I know we have  
4 produced our American Express statements.

5 Q. For all expenses that were incurred in  
6 HudsonGray you produced --

7 A. Not HudsonGray. We produced our  
8 statements.

9 Q. My question was this: You look at  
10 that line item, you are claiming that your  
11 organization incurred an expense of \$36,060.10;  
12 correct?

13 A. Off Darren's Amex yes.

14 Q. And you reimbursed Darren Andereck for  
15 that; correct?

16 A. That's correct.

17 Q. And have you provided the backup for  
18 that item to my client?

19 A. I don't recall if the Amex statements  
20 for HudsonGray have been produced. I know we  
21 produced them for XA.

22 Q. Would you agree with me as someone in  
23 the business world in order for anyone to know  
24 what those charges were for you would need to see  
25 the statement; right?

1 J. Wagner

2 A. Correct.

3 Q. Then if you look at the August 6th  
4 same thing, Darren Andereck one hundred and ninety  
5 thousand dollar American Express?

6 A. Correct.

7 Q. And again, we don't have those  
8 statements, do we?

9 A. I don't know that you do or you don't.

10 Q. You never have given them to your  
11 lawyer to give to me, have you?

12 A. I don't know if we produced the Amex  
13 statements. I have not personally produced  
14 Darren's Amex statements. I don't know whether  
15 they have been produced or not.

16 Q. You would agree in order for me to see  
17 what was charged for a hundred and ninety thousand  
18 dollars I would need to see the actual statement;  
19 right?

20 A. That's reasonable, yes.

21 Q. Who is Mariusz Lubak?

22 A. I don't know who that is.

23 What date are you on?

24 Q. It is on page 3.

25 A. And the date?



1 J. Wagner

2 Q. August 18th.

3 A. I don't know who that is.

4 Q. Who is Kage Konsulting LLC?

5 A. They're a vendor that does venue  
6 rentals, like event venues. They manage event  
7 venues.

8 Q. So again on September 14th Darren  
9 Andereck presented with you an Amex bill for  
10 \$11,222.71; correct?

11 A. Yes.

12 Q. That was paid?

13 A. I assume that was paid.

14 Q. If you look on page five again you  
15 have Darren Andereck October 17th of 2014.

16 A. Okay.

17 Q. \$17,803.52 Amex bill; correct?

18 A. Correct.

19 Q. Is that paid?

20 A. I assume it was paid.

21 Q. If you look at the entry for October  
22 20, 2014.

23 A. Okay.

24 Q. Mixed Company.

25 Why is Mixed Company receiving four

1 J. Wagner

2 thousand dollars?

3 A. I wouldn't be able to answer that  
4 without looking at the accounting files. I assume  
5 they performed services for HudsonGray.

6 Q. And that's the company owned by in  
7 part by Jean Wilson?

8 A. That's correct.

9 MR. MATTHEWS: Objection.

10 Q. Who is Jonathan Matthey?

11 A. I don't know who that is.

12 Q. What is Spread House?

13 A. I don't know who that is.

14 Q. You are the corporate designee for  
15 HudsonGray on its financials; right?

16 A. With Darren.

17 Q. So Darren can answer to the degree you  
18 can't?

19 A. If there are vendors and even  
20 contractors I wouldn't know them by name.

21 Q. Corporate Concepts Incorporated?

22 A. I believe that's the furniture  
23 provider.

24 Q. Now can you show me on the first two  
25 pages where the first moneys were received from an

1 J. Wagner

2 actual client?

3 A. So it appears we started receiving  
4 deposits in July, on July 25th.

5 Q. So is it fair to say that until July  
6 25th you had no revenues as a company; right?

7 A. That appears to be the case off the  
8 general ledger.

9 Q. When you told me before that you met  
10 with Brad Powers at a restaurant with Mr.  
11 Andereck, do you remember that in the Spring of  
12 2014?

13 A. Yes, I do.

14 Q. Was that Frankie and Johnny?

15 A. I don't recall the restaurant.

16 MR. O'CONNOR: Please mark this as HG  
17 Exhibit 41.

18 (HG Exhibit 41, a December 18, 2014  
19 e-mail exchange Bates stamped Defendant  
20 137367, marked for identification, as of  
21 this date.)

22 Q. I am showing you what is marked HG 41  
23 which is a December 18, 2014 e-mail exchange and  
24 it is marked Defendant 137367.

25 A. Okay.

1 J. Wagner

2 Q. And it is also marked confidential.

3 Do you see that?

4 A. I do.

5 Q. I want to ask you about that line at  
6 the bottom of the first string where it says "Let  
7 me know when there is an update from Nate and/or  
8 status of bank package. Is the door with Brad  
9 really closed at this point."

10 Do you see that?

11 A. I do.

12 Q. Why was Jean writing that to you; do  
13 you know?

14 A. I assume it was around the very tight  
15 cash flow that we had that we previously just  
16 discussed where there was a potential where Nate I  
17 believe may have put money into the company. We  
18 were very cash flow constrained at the end of  
19 December of 2014.

20 Q. And she said is the door with Brad  
21 really closed and that is a reference before to  
22 what you said about he couldn't come up with the  
23 money?

24 A. There was a significant, large amount  
25 of money. I don't recall the exact amount but

1 J. Wagner

2 yes, Brad Powers was going to put in significantly  
3 more money than he ended up doing. So it created  
4 a cash flow problem.

5 Q. Other than Nate Bradley and -- other  
6 than Nate Bradley and Brad Powers, other than  
7 those two investment sources, were there any other  
8 sources of revenue; investors, moneys or equity?

9 A. Revenue or investor?

10 Q. Anything. Any sources of a cash  
11 infusion by anybody.

12 A. On the general ledger you can track  
13 the deposits that came in from clients but in  
14 terms of investors best of my recollection Brad  
15 Powers and potentially Nate were the only people  
16 that supported the company from an investment or  
17 loan standpoint.

18 Q. And I think you told me you are not  
19 sure of the status of Brad Powers; right?

20 A. When you say status, what do you mean?

21 Q. Whether he has been paid back.

22 A. No. I said that Brad Powers is  
23 holding warrants in the company.

24 Q. When do they expire?

25 A. They are open-ended warrants.

1 J. Wagner

2 Q. Indefinitely?

3 A. Well, they are tied to another  
4 financing line. So that's gonna trigger for the  
5 warrants.

6 Q. And there is an agreement to that  
7 effect; right?

8 A. There is a warrant document I assume  
9 somewhere.

10 MR. O'CONNOR: Please mark this as HG  
11 Exhibit 42.

12 (HG Exhibit 42, e-mail from Darren  
13 Andereck Bates stamped Defendant 90864  
14 through 65 marked confidential and dated  
15 December 12, 2014, marked for  
16 identification, as of this date.)

17 Q. So I have shown you HG 42 marked  
18 Defendant 90864 through 65. It is marked  
19 confidential and it is dated December 12, 2014.

20 Do you see that?

21 A. I do.

22 Q. This is an e-mail from Darren Andereck  
23 and he was asked to give you guys an update on the  
24 pipeline; right?

25 A. Correct.

1 J. Wagner

2 Q. And if you look on the second page it  
3 says "I just finished the last call with Nate for  
4 today. He is trying to close a funding round  
5 tomorrow and will allocate one hundred thousand  
6 dollars to HG."

7 Do you see that?

8 A. I do.

9 Q. Does that refresh your recollection  
10 that --

11 A. This is what we were talking about,  
12 yes.

13 Q. It helps you recall how much you got?

14 A. I don't know if we actually received  
15 money from Nate. I know that Nate was looking to  
16 do something around Audio Eye's capital campaign  
17 and he was offering to assist HudsonGray with  
18 that.

19 Q. Now if you add up the total pipeline  
20 that Darren laid out for you, it comes out to 6.36  
21 million dollars.

22 A. Okay.

23 Q. Does that sound about right?

24 A. That's correct. I mean I didn't add  
25 it up but I will give you that.

1 J. Wagner

2 Q. So can we agree by the end of your  
3 first calendar year which is only really six  
4 months of operations, you had in the pipeline 6.36  
5 million dollars just for quarters one and two  
6 alone for 2015; correct?

7 MR. MATTHEWS: Objection.

8 A. I would say these are estimates.  
9 These certainly aren't contracts of business but  
10 they are estimates of what is considered to be  
11 upcoming projects with a high probability of  
12 activation.

13 Q. Jean wrote "I understand that is not  
14 AR but I would think it would carry weight with  
15 Nate based on our past delivery and execution."

16 Right?

17 A. That's what she said, yes.

18 Q. That prompts me to ask two questions.

19 What is she referring to when she says  
20 past delivery and execution?

21 A. I assume she is talking about what the  
22 team has been able to do working together.

23 Q. She is not referring to any prior  
24 raise that he made for you, is she?

25 A. No. I think when she said my



1 J. Wagner

2 interpretation of this is based on our past  
3 delivery and execution she is talking about the  
4 teams performance not Nate.

5 Q. How would he know anything about your  
6 past performance and execution?

7 A. Again, Nate was part of CMG for a  
8 period of time.

9 Q. Got it.

10 So you went to Nate because Nate knew  
11 XA; right?

12 A. I went to Nate because Nate was a  
13 friend of mine and Nate was working under the CMG  
14 world and Nate knew my team.

15 Q. But you had a pipeline that you felt  
16 comfortable giving to Nate and he could rely on it  
17 in going to his board; correct?

18 A. I don't know if Nate went to his board  
19 with this and I don't recall whether this was a  
20 personal investment in addition to what Nate was  
21 offering to do in the capital campaign. I know in  
22 the context of this there was a conversation with  
23 Nate about us being very tight cash position and  
24 would he be interested in loaning the company  
25 money or investing in it. I don't recall the

1 J. Wagner  
2 specific details. But I know that was the context  
3 of the discussions with Nate.

4 MR. O'CONNOR: Please mark this as HG  
5 Exhibit 43.

6 (HG Exhibit 43, a December 12, 2014  
7 e-mail Bates stamped Defendant 113447,  
8 marked for identification, as of this date.)

9 Q. This is HG 43.  
10 Have you ever seen it before? And for  
11 the record it is a December 12, 2014 e-mail;  
12 right? It came from your production.

13 A. Correct.

14 Q. It is marked Defendant 113447?

15 A. Yes.

16 Q. And in it Jean Wilson wrote "I know  
17 you are very busy and it was a late night last  
18 night. So thank you very much for doing this. I  
19 appreciate it. Just going to present it to Nate's  
20 board."

21 Right?

22 A. Just going to present it to Nate's  
23 board. So hopefully good things. Okay.

24 Q. So you knew that the financials you  
25 were putting together for Nate had to be solid

1 J. Wagner

2 enough to go to a board; right?

3 A. From the context of the e-mail I read  
4 that Nate -- Jean was putting forward that Nate  
5 was going to present this to the board. The  
6 financials are characterized here in the pipeline  
7 of projects that would be anticipated in the next  
8 year.

9 Q. Has HudsonGray earned a profit in its  
10 history?

11 A. Has HudsonGray earned a profit in its  
12 history?

13 Q. Yes.

14 A. HudsonGray has earned a profit in its  
15 history.

16 Q. How much?

17 A. There has been, I think the first year  
18 we lost about five hundred thousand and the next  
19 period anywhere from a thousand dollars to around  
20 maybe three hundred and fifty thousand.

21 Q. In profit?

22 A. Well, net income, is that what you  
23 mean?

24 Q. Yes.

25 You file 1040s?

1 J. Wagner

2 A. It is all public available  
3 information.

4 Q. Public available in what way?

5 A. I mean there are tax returns.

6 Q. It is not available to the public. It  
7 is certainly not available to me. I don't have  
8 it.

9 A. I mean they are federally filed tax  
10 returns.

11 Q. And when it comes to your 1040 you  
12 indicate that there is profit; right?

13 A. Some years we have had a profit, yes.

14 Q. And you don't know what that is?

15 A. I don't know it off the top of my  
16 head, no.

17 Q. You are here as a designee to tell us  
18 what it is; right?

19 A. I can give you general references.

20 MR. MATTHEWS: He is not here to  
21 give --

22 MR. O'CONNOR: Financial performance  
23 of HudsonGray isn't relevant? It's not on  
24 there.

25 MR. MATTHEWS: Financial performance

1 J. Wagner

2 he is here to talk about.

3 MR. O'CONNOR: But he can't tell me  
4 what his profit is.

5 MR. MATTHEWS: In which year? Name a  
6 year.

7 MR. O'CONNOR: Any year. Give me the  
8 year. I will take any year.

9 MR. MATTHEWS: The first year Mr.  
10 Wagner testified --

11 MR. O'CONNOR: Please don't testify.  
12 If you start doing that we will get the  
13 judge on the phone.

14 MR. MATTHEWS: Call the judge. Don't  
15 mischaracterize the witness' testimony.

16 BY MR. O'CONNOR:

17 Q. Sir, tell me what the was the profit  
18 earned in calendar year 2015?

19 A. We did 1.1 approximately the first  
20 year and we lost five hundred thousand.

21 2015 we did around seven million and  
22 around fifty-eight thousand in net income.

23 Q. Was that distributed out to you?

24 A. In dividend format?

25 Q. Yes.

1 J. Wagner

2 A. No.

3 Q. Did you pay it back into the company?

4 A. Yeah. The earnings rolled over into  
5 the company yes.

6 Q. Tell me about the next year after  
7 that?

8 A. I believe it was around nine million.

9 Q. 2016 now you are talking?

10 A. I believe so.

11 Q. What was your profit?

12 A. I don't recall exactly, but I think it  
13 was fifty-eight thousand.

14 Q. That's the same as the year before?

15 A. I don't recall offhand.

16 Q. How much have you been drawing as a  
17 salary in each of these years?

18 A. It varies, but typically around one  
19 hundred thirty, one hundred forty thousand.

20 Q. Has it ever been more than that?

21 A. I did around 190 in 2016.

22 Q. What did you do for 2017?

23 A. Actually, that was 2017.

24 Q. What was your profit in 2017 as a  
25 company?

1 J. Wagner

2 A. A profit in 2017 I think we made a  
3 thousand dollars.

4 Q. But again, in order for us to  
5 understand that we would need to see your  
6 financials, we need to see your expenses; correct?

7 A. Right.

8 Q. Have you produced those to us?

9 MR. MATTHEWS: Do you know?

10 A. I believe that we provided our P&Ls,  
11 our profit and loss statements.

12 Q. You have had four years now running  
13 this company; right?

14 A. That's correct.

15 Q. You testified previously that the  
16 profit margin in this industry generally runs  
17 between 22 and 25 percent.

18 Do you remember saying that?

19 A. Is a general statement yes, in the  
20 industry.

21 Q. Tell us in your own words sir, then  
22 why is it that you can't even make a profit?

23 MR. MATTHEWS: Objection.

24 A. I didn't say we couldn't make a  
25 profit.

1 J. Wagner

2 Q. You made a very small profit; right?

3 A. We are still making profits.

4 Q. You call that 22 to 25 percent?

5 A. There are some years we made more and  
6 some years we made less. There has been a  
7 significant drain on the company from a legal  
8 expense standpoint.

9 Q. So the legal expenses are being  
10 charged against the company; right? You are  
11 paying them out of HudsonGray; is that correct?

12 A. That's correct.

13 Q. Are you paying for the third-party  
14 complaint by the way?

15 A. I am sorry?

16 Q. Do you understand that there is a  
17 third-party complaint being made in this case?

18 A. I do understand that.

19 Q. And is HudsonGray paying the legal  
20 fees for that third-party complaint?

21 MR. MATTHEWS: Objection.

22 Go ahead.

23 A. As far as I know, yes.

24 Q. And it is being passed through the  
25 company; correct?



1 J. Wagner

2 A. It would be an expense as part of our  
3 legal expenses; correct.

4 Q. Even though it is supposedly for the  
5 personal harm to the individuals who made the  
6 claim; right?

7 A. I am not sure what you are asking.

8 Q. Do you know what your third-party  
9 complaint is?

10 A. Defamation.

11 Q. You have it against who?

12 A. The plaintiffs.

13 Q. And so that's a harm to you  
14 personally; correct?

15 A. Also harms the company.

16 Q. Well, the company isn't making a  
17 defamation claim; right?

18 A. Okay.

19 Q. You are making a defamation claim?

20 A. Okay.

21 Q. So tell me why is the company paying  
22 the legal fees for you to make a defamation claim,  
23 if you know?

24 A. I don't.

25 MR. O'CONNOR: Let's take a few

Page 169

1 J. Wagner

2 minutes and then we will come back. I am  
3 almost finished.

4 (Recess taken.)

5 MR. O'CONNOR: Please mark this as HG  
6 Exhibit 44.

7 (HG Exhibit 44, a document titled  
8 HudsonGray Income Summary With Project  
9 Support, marked for identification, as of  
10 this date.)

11 Q. HudsonGray 44, this is a summary you  
12 prepared sir?

13 A. It is a summary that our team  
14 prepared.

15 Q. And it is titled HudsonGray Income  
16 Summary With Project Support?

17 A. That's correct.

18 Q. And this is only through January 31,  
19 2018; right?

20 A. That's correct.

21 Q. Can we agree that HudsonGray's  
22 performance since January 31, 2018 has stayed on  
23 par with what it was previously?

24 A. We are about ten million year-to-date.

25 Q. So your ten million year-to-date and

1 J. Wagner

2 it is only November 2nd?

3 A. That's correct.

4 Q. So you are ahead of where you were  
5 last year?

6 A. We will see how the year ends up.

7 Q. Congratulations.

8 MR. O'CONNOR: Off the record.

9 (Discussion off the record.)

10 BY MR. O'CONNOR:

11 Q. Mr. Wagner, you gave testimony in the  
12 matter styled Burkhardt versus XA, did you not?

13 A. I did.

14 Q. And on May 25, 2016 you testified in  
15 that action, did you not?

16 A. I believe I did, yes.

17 Q. And I just want to read into the  
18 record your statement on page 104 and I am reading  
19 from line 21.

20 "Question: Where did you get these  
21 documents from?

22 Answer: I had a back up of e-mails.

23 Question: Okay. These are e-mails  
24 that you received at your XP agency.com  
25 account; is that correct?

1 J. Wagner

2 Answer: That's correct.

3 Question: And you still have a copy  
4 of all those e-mails?

5 Answer: I have a PST file yes, a  
6 backup file.

7 Question: Does that backup file cover  
8 all of your time at XA?

9 Answer: 2009 forward."

10 And then you said -- he said "aha" and  
11 you said "I am not sure. I believe it  
12 does."

13 Do you see that?

14 A. I do.

15 Q. Was that your truthful testimony under  
16 oath?

17 A. Yes, it was.

18 Q. How did you get your PST folder in  
19 your possession?

20 A. I believe it was on USB drive.

21 Q. How did you get a USB drive?

22 A. I purchased one.

23 Q. So you have enough technical knowledge  
24 to go into a computer at XA and download your  
25 entire PST folder; correct?

1 J. Wagner

2 A. I was able to copy a PST file, yes.

3 Q. And when did you do that, sir?

4 A. I don't recall exactly.

5 Q. And which office did you do it at?

6 A. I am sure it was at the XA office in  
7 Chicago.

8 Q. Was it prior to your departure on May  
9 15, 2014?

10 MR. MATTHEWS: Objection.

11 Go ahead.

12 A. Yeah. I certainly wanted a record of  
13 everything that happened which I am glad I had at  
14 this point.

15 Q. Did you seek permission of anybody at  
16 XA or CMG to do so?

17 A. No, I did not.

18 Q. Last question is it pertains to the  
19 defenses raised by HudsonGray. If you want to say  
20 that he is going to be the one to talk about it  
21 that's fine, but there is a defense raised in the  
22 case that trading activity by Mr. Laken somehow  
23 should disallow the claims in this case.

24 Are you familiar with that?

25 MR. MATTHEWS: You can testify to your

1 J. Wagner

2 familiarity.

3 A. I am familiar with the claims, yes.

4 Q. Tell me about it.

5 What's this defense of yours at

6 HudsonGray?

7 MR. MATTHEWS: I am going to object in

8 that it is not listed in the topics.

9 But you can go ahead and testify.

10 MR. O'CONNOR: I think it is, but he

11 can go ahead and answer.

12 A. At a high leveling context it is that

13 what Mr. Laken's attorneys have admitted that he

14 has been posting on the stock board his giant

15 killer promoting the stock. At the same time that

16 there is trading records showing that Barbara

17 Laken is selling stock acting on inside

18 information and promoting stock on the stock

19 board.

20 Q. Anything else?

21 A. I am sure there is more details to it

22 but this is something that Scott is handling. I

23 am not crafting the unclean hands defense.

24 Q. Let me go through what you just said.

25 Posting on a stock board as giant killer.

1 J. Wagner

2 What did he post?

3 A. There is numerous posts. I don't have  
4 them memorized verbatim.

5 Q. What were the posts and when?

6 A. Again, they were over the past periods  
7 of time while he was involved with inside  
8 information and working in CMG access to the  
9 auditor, running the company.

10 Q. Is it your claim that for HudsonGray  
11 that this occurred prior to the departure of the  
12 defendants in this case or before?

13 MR. MATTHEWS: You know what, I am  
14 going to object. This is not part of the  
15 30(b)(6) deposition topics. You are happy  
16 to take a look at them.

17 MR. O'CONNOR: Sir, it is your  
18 client's defense.

19 MR. MATTHEWS: It is not listed. We  
20 client has already been deposed in this  
21 action and it also goes to attorney work  
22 product.

23 MR. O'CONNOR: So your position is you  
24 are not going to let him answer questions?

25 MR. MATTHEWS: I'd answer a few

1 J. Wagner

2 questions but I mean the giant killer post I  
3 know there are hundreds of them.

4 MR. O'CONNOR: I'd appreciate if you  
5 don't talk.

6 DI MR. MATTHEWS: Then I prefer not to  
7 let him answer the question.

8 MR. O'CONNOR: You are not going to  
9 let your client answer questions you know  
10 that you are going to have to bring him  
11 back.

12 MR. MATTHEWS: I don't know how you  
13 would do that. It is not part of the  
14 topics. I want to be collegial about this  
15 so that we don't have a dispute.

16 MR. O'CONNOR: Let me ask this.

17 BY MR. O'CONNOR:

18 Q. You know there is a claim against your  
19 clients, against you and against your company and  
20 against Darren, against Jean; right? For damages;  
21 right?

22 A. Correct.

23 Q. Do you have any claim that those  
24 damages aren't owed to you because of something  
25 done with Glenn Laken with his posting board?



1 J. Wagner

2 A. I can't answer that. That's a legal  
3 question.

4 Q. You don't know the answer to that?

5 A. I do not. That would be Scott who  
6 would answer that.

7 MR. O'CONNOR: We are going to take a  
8 minute and then we will be right back.

9 MR. MATTHEWS: Okay.

10 (Recess taken.)

11 MR. O'CONNOR: Subject to any  
12 questions that your lawyer has, I have no  
13 further questions.

14 MR. MATTHEWS: I have no questions at  
15 this time.

16 (Continued on the next page.)

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Page 177

1 J. Wagner

2 Q. Thank you, sir. Have a nice flight.

3 A. Thank you very much.

4 (Time Noted: 2:13 p.m.)

5  
6  
7 JOSEPH WAGNER

8  
9 Subscribed and sworn to before me

10 this day of , 2018.

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13 (Notary Public) My Commission Expires:

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, LYNNE D. METZ, a Shorthand Reporter  
and a Notary Public within and for the State of  
New York, do hereby certify that the foregoing  
deposition of JOSEPH WAGNER was taken before me on  
the 2nd day of November, 2018;

That the said witness was duly sworn  
before the commencement of his testimony; that the  
said testimony was taken stenographically by me  
and then transcribed.

I further certify that I am not  
related by blood or marriage to any of the parties  
to this action or interested directly or  
indirectly in the matter in controversy; nor am I  
in the employ of any of the counsel in this  
action.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 5th day of November, 2018.



LYNNE D. METZ

November 2, 2018

# I N D E X

WITNESS	EXAMINATION BY	PAGE
JOSEPH WAGNER	MR. O'CONNOR	4

## ----- INFORMATION REQUESTS -----

DIRECTIONS (DI): 174

INSERT: None

RULINGS (RL): None

REQUESTS (RQ): 113

CERTIFIED (CE): None

MOTIONS (MO): None

# E X H I B I T S

HG Exhibits	For ID
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Exhibit 1, notice of deposition	4
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Exhibit 2, a February 24, 2014 e-mail from Geomatic Consultants to a recipient	29
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Exhibit 3, an e-mail that's been produced by HudsonGray dated March 3, 2014	42
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Exhibit 4, an e-mail chain	47
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1		
2	Exhibit 5, a document from the Delaware	57
3	Division of Corporations Secretary of	
4	State website	
5	Exhibit 6, a document Bates stamped	58
6	Defendant 68980 from the IRS	
7	Exhibit 7, a document Bates stamped	60
8	Creative IT 1450 and 1451	
9	Exhibit 8, a document Bates stamped	63
10	Creative IT 1389 dated April 23, 2014	
11	Exhibit 9, an April 27, 2014 e-mail	66
12	exchange Bates stamped Creative IT	
13	01390-1391	
14	Exhibit 10, a May 8, 2014 exchange	68
15	containing a Dell quotation Bates	
16	stamped Creative IT 1414 through 1419	
17	Exhibit 11, a May 16, 2014 e-mail Bates	70
18	stamped Creative IT 01426 through 27	
19	Exhibit 12, a document Bates stamped	72
20	Geomatic CON 15	
21	Exhibit 13, a May 12, 2014 exchange but	75
22	it actually begins on April 15, 2014	
23	Bates stamped DEF 77864 and it is also	
24	marked confidential	
25	Exhibit 14, a document Bates stamped	77

1		
2	Creative IT 01392	
3	Exhibit 15, a document Bates stamped	78
4	Creative IT 01393 through 95	
5	Exhibit 16, a May 5, 2014 e-mail Bates	83
6	stamped Creative IT 01404	
7	Exhibit 17, an e-mail from David Tuma	84
8	to Joseph Wagner and to Mia Bates	
9	stamped Creative IT 01406	
10	Exhibit 18, an e-mail exchange on May	86
11	21, 2014 Bates stamped Creative IT	
12	01428-29	
13	Exhibit 19, a May 13, 2014 hosted file	88
14	server proposal Bates stamped Creative	
15	IT 01430 through 1449	
16	Exhibit 20, a May 21, 2014 e-mail	90
17	Exhibit 21, a May 22, 2014 e-mail Bates	99
18	stamped Creative IT 01455	
19	Exhibit 22, an e-mail Bates stamped	103
20	Creative IT 01456 through 01458	
21	Exhibit 23, a document Bates stamped	106
22	Creative IT 01459	
23	Exhibit 24, an e-mail dated July 8,	109
24	2014 HudsonGray server presentation	
25	Exhibit 25, a June 30, 2014 Creative IT	111

1  
2 invoice Bates stamped Creative IT 24  
3 Exhibit 26, a July 31, 2014 invoice 115  
4 from Creative IT Consulting to Joseph  
5 Wagner at HudsonGray  
6 Exhibit 27, a September 30, 2014 116  
7 invoice from Creative IT Consulting  
8 Exhibit 28, an October 31, 2014 invoice 118  
9 Bates stamped Creative IT 30  
10 Exhibit 29, a July 21, 2014 e-mail 122  
11 exchange Bates stamped Creative IT 1528  
12 through 1532  
13 Exhibit 30, a document Bates stamped 123  
14 Defendant 150711  
15 Exhibit 31, a December 15, 2014 e-mail 126  
16 entitled General Ledger and Trial  
17 Balance  
18 Exhibit 32, a document Bates stamped 129  
19 Defendant 95461 and 62  
20 Exhibit 33, a December 16, 2014 e-mail 131  
21 chain Bates stamped Defendant 93919  
22 through 93920 also marked confidential  
23 Exhibit 34, a document entitled NBC 134  
24 Primetime Preview 2014 Contact List  
25 Exhibit 35, a September 10, 2014 e-mail 137

1  
2 from David Tuma to Joe Wagner with an  
3 attachment events log  
4 Exhibit 36, a December 8, 2014 e-mail 138  
5 Bates stamped Defendant 80305 through  
6 80307  
7 Exhibit 37, a document Bates stamped 140  
8 Defendant 77850 also marked  
9 confidential by the defendant  
10 Exhibit 38, an e-mail from September 141  
11 17, 2014 Bates stamped Defendant 76978  
12 Exhibit 39, a document Bates stamped 143  
13 DEF 87910 through 87912  
14 Exhibit 40, a document marked 143  
15 HudsonGray General Ledger as of  
16 December 31, 2014 Bates stamped  
17 Defendant 39337 through 39472 and  
18 marked confidential 2014  
19 Exhibit 41, a December 18, 2014 e-mail 154  
20 exchange Bates stamped Defendant 137367  
21 Exhibit 42, e-mail from Darren Andereck 157  
22 Bates stamped Defendant 90864 through  
23 65 marked confidential and dated  
24 December 12, 2014  
25 Exhibit 43, a December 12, 2014 e-mail 161



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Bates stamped Defendant 113447  
Exhibit 44, a document titled 169  
HudsonGray Income Summary With Project  
Support  
(Exhibits retained by the court reporter.)

## VERITEXT COURT REPORTING

NAME OF CASE:

DATE OF DEPOSITION:

WITNESS:

If there are any corrections to your deposition,  
indicate them on this sheet of paper, give the  
change, page number, and line number.

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Subscribed and sworn to before me

this day of , 2018.

(Notary Public)

My Commission Expires: